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OVERSEERS OF THE POOR MANUAL

A DIGESTED TREATISE AND
COMPENDIUM OF THE LAW

ON

OVERSEERS OF THE POOR AND OTHER LAWS
PERTAINING TO THE POOR

CONTAINING

FULL AND COMPLETE ANNOTATIONS, NECESSARY
FORMS AND A REFERENCE TABLE OF
LAWS AND STATUTES.

BY

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1907

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PREFACE.

The purpose of this work is to present in a clear, concise and logical form all the laws pertaining to the duties of Overseer of the Poor and other laws pertaining to the Poor.

The laws and statutes as here presented are as they exist at this date, including all amendments made by the legislature during its last session (1906). It has been deemed advisable in practically all cases to give the law or statute verbatim as taken from the official records rather than for the authors to state it in their own words. The work will be found to have full annotations which appear under the sections to which they refer.

It is impossible in a work, within the compass with which this must be, to give a digest of all the decisions which may be found bearing upon the subjects treated throughout its sections, and instead of making any attempt so to do there has been selected such cases as broadly discuss the general principles or bring out particularly the important points under consideration.

This volume will be found to contain practically all forms that are in use, and these follow the sections to which they refer. This will be found more convenient than to have all forms appear at the end of the book.

Realizing the difficulty that always exists with one seeking to find the law, special effort has been made to provide a full and complete index and to so cross-reference every topic that the subject sought for may be easily and readily found.

In treating the several subjects herein discussed it has been found necessary in some cases to either reprint or practically duplicate certain sections of some of the laws or to state their substance or set forth the part thereof applicable to the subject being treated. In such cases there will be found cross-references to the part of the work where the law may be found in full. To supplement these cross-references and cover any omission of cross-references that may exist, and to enable the reader to at any time readily find the particular law, statute or section that he may desire, there will be found on the first pages of this volume a

table of all the laws and statutes herein appearing, giving the section in this work where such law, statute or section may be found. It is believed that this feature will be of great convenience.

Throughout the preparation of this work very valuable assistance has been rendered by Mr. Charles Porter Downs, who for many years was an official of the Town of Brighton, N. Y., and as such had a wide, practical experience in town and county affairs. His services and experience have been of inestimable value.

Perfection is not attainable in a work of this character but there had been made, however, a conscientious endeavor to present a treatise as free from error as may be, and it is hoped that this work will be of service to many and will receive such approbation as it may justly merit.

REED & SHUTT.

March, 1907.

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CHAPTER ONE

OVERSEERS OF THE POOR

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§ 1. **Overseers of the poor.**—The electors of each town may, at their biennial town meeting, determine by resolution whether they will elect one or two overseers of the poor and the number so determined upon shall be thereafter biennially elected for a term of two years. Whenever any town shall have determined upon having two overseers of the poor, the electors thereof may determine by a resolution at a biennial town meeting, to thereafter have but one, and if they so determine thereafter no other overseer shall be elected or appointed, until the term of the overseer continuing in office at the time of adopting the resolution shall expire or become vacant, and the overseer in office may con-

Overseers of the poor.

tinue to act until his term shall expire or become vacant. The electors of any town may, at any biennial or regularly called special town meeting on the application of at least twenty-five resident taxpayers whose names appear upon the then last preceding town assessment-roll, adopt by ballot a resolution that there shall be appointed in and for such town one overseer of the poor. If a majority of the ballots so cast shall be in favor of appointing an overseer of the poor, no overseer of the poor shall thereafter be elected in such town except as hereinafter provided, and the overseers of the poor of such town elected at the town meeting at which such resolution is adopted or who shall then be in office shall continue to hold office for the terms for which they were respectively chosen; and within thirty days before the expiration of the term of office of such elected overseer whose term expires latest, the town board of such town shall meet and appoint one overseer of the poor for such town, who shall hold office for one year from the first day of May next after his appointment; and annually in the month of April in each year thereafter an overseer of the poor shall be appointed by the town board of such town for the term of one year from the first day of May next following such month of April. Each overseer of the poor so appointed shall execute and file with the town clerk an official undertaking in such form and for such sum as the town board may by resolution require and approve. An overseer of the poor, so appointed, shall not hold any other town office during the term for which he is so appointed, and if he shall accept an election or appointment to any other town office he shall immediately cease to be an overseer of the poor. If a vacancy shall occur in the office of an overseer of the poor, so appointed, such vacancy shall be filled by the town board, by appointment, for the balance of the unexpired term. The compensation of an overseer of the poor so appointed, shall be fixed by the town board of such town, but shall not exceed, in any one year, the sum of one thousand dollars, and shall be a town charge. At any subsequent town meeting after the expiration of three years from the adoption of a resolution by any town to appoint an overseer of the poor, the electors of the town may determine by ballot to thereafter elect one or more overseers of the poor, and if they determine so to elect, then at the next biennial town meeting thereafter one or more overseers of the poor shall be elected in pursuance of the laws regulating the election of overseers of the poor,

Special town meetings, undertakings.

and the term or terms of the overseer or overseers first so elected shall commence upon the expiration of the term of office of the overseer of the poor last theretofore appointed in pursuance of law, and shall expire as though each such term commenced at the time of election; and their successors shall thereafter be elected in pursuance of law.

Town Law, § 16, as am'd by chap. 481, Laws of 1897. See § 369, ante.

As to the election and appointment of overseers of the poor in towns within counties having over three hundred thousand inhabitants, other than the counties of New York and Kings.

See Laws 1895, chap. 816, § 6, as am'd by Laws 1900, chap. 507.

§ 2. **Special town meetings.**—Special town meetings shall also be held whenever twenty-five taxpayers upon the last town assessment-roll shall, by written application addressed to the town clerk, require a special town meeting to be called, for the purpose of raising money for the support of the poor; also to vote upon the question of raising and appropriating money for the construction and maintenance of any bridges which the town may be authorized by law to erect or maintain; or for the purpose of determining in regard to the prosecution or defense of actions, or the raising of money therefor; and to vote upon any proposition which might have been determined by the electors of the town at the last annual town meeting, but was not acted upon thereat. Special town meetings may also be held upon the like application of the supervisor, commissioners of highways, or overseers of the poor, to determine questions pertaining to their respective duties as such officers, and which the electors of a town have a right to determine.

Town Law, § 26.

§ 3. **Undertaking of overseer of the poor.**—Every person elected or appointed overseer of the poor in any town shall, within ten days after being notified of his election or appointment, execute an undertaking with one or more sureties, to be approved by the supervisor of his town, to the effect that he will faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer, which undertaking shall be delivered to the supervisor and filed by him in the office of the town clerk within ten days thereafter.

Town Law, § 62.

Form of undertaking, resignation of officers.

UNDERTAKING OF OVERSEER OF THE POOR.

WHEREAS, ..., of the town of, in the county of, was on the day of, 19, duly elected overseer of the poor of said town; now, therefore, we, the said, principal, and, of the town of, his surety, do hereby, pursuant to section 62 of the Town Law, jointly and severally undertake that the said will well and faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer.

Dated this day of, 19

.....
.....

STATE OF NEW YORK, }
County of, } ss.:

On this day of, in the year 19, before me, the subscriber, personally came and to me known to be the persons described in and who executed the within instrument, and severally acknowledged to me that they executed the said instrument.

.....
(Official description.)

County of, ss.:

. . . ., being duly sworn, deposes and says: That he is the surety named in the foregoing instrument; that he is a resident of and a householder (or freeholder) within the county of, and is worth the sum of dollars over all debts and liabilities which he owes, or has incurred, and exclusive of property exempt from levy and sale under execution.

.....

Subscribed and sworn to before me }
this day of, 19 }
Notary Public.

[Or title of office.]

I approve of the within undertaking as to the form and sufficiency thereof.

.....
Supervisor.

§ 4. **Form of undertaking, and liability thereon.**—Every undertaking of a town officer, as provided by this chapter or otherwise, must be executed by such officer and his sureties and acknowledged or proven and certified in like manner as deeds to be recorded, and the approval indorsed thereon. The parties executing such undertaking shall be jointly and severally liable, regardless of its form in that respect, for the damages to any person or party by reason of a breach of its terms.

Town Law, § 66.

§ 5. **Resignation of town officers.**—Any three justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer of their town; and whenever they shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town.

Town Law, § 64.

Vacancies, delivery of books, etc.

NOTICE OF ACCEPTANCE OF RESIGNATION.

COUNTY OF..... }
Town of } ss.:
To, Town Clerk of said Town:

You are hereby notified, pursuant to section 64 of the Town Law, that we, the undersigned, justices of the peace of said town have, for good cause shown, accepted the resignation of as [name the office] of said town.

Dated this day of, 19..

.....
.....
.....
Justices of the Peace.

§ 6. **Filling of vacancies.**— When a vacancy shall occur or exist in any town office, the town board or a majority of them may, by an instrument under their hands and seals, appoint a suitable person to fill the vacancy, and the person appointed, except justices of the peace, shall hold the office until the next biennial town meeting. A person so appointed to the office of justice of the peace shall hold the office until the next biennial town meeting, unless the appointment shall be made to fill the vacancy of an officer whose term will expire on the thirty-first day of December next thereafter, in which case the term of office of the person so appointed shall expire on the thirty-first day of December next succeeding his appointment. The board making the appointment shall cause the same to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed. A copy of the appointment of a justice of the peace shall also be filed in the office of the county clerk, before the person appointed shall be authorized to act.

Town Law, § 65.

APPOINTMENT TO FILL VACANCY.

COUNTY OF..... }
Town of } ss.:

WHEREAS, a vacancy has occurred in the office of.....of said town by the resignation [or otherwise] of; now, therefore, we, the undersigned, town board of said town, do hereby, pursuant to section 65 of the Town Law, appoint to fill the vacancy in the office of, caused by the resignation [or otherwise] of the said, to serve until the next annual town meeting.

Witness our hands and seals this....day of....., 19..
(Town board sign and seal here.)

§ 7. **Delivery of books and papers by outgoing officer to successor.**— Whenever the term of office of any supervisor, town clerk,

Compensation; poor defined.

commissioner of highways or overseer of the poor shall expire, or when either of such officers shall resign, and another person shall be elected or appointed to the office, the succeeding officer shall, immediately after he shall have entered on the duties of office, demand of his predecessor all the records, books and papers under his control belonging to such office. Every person so going out of office, whenever so required, shall deliver upon oath to his successor all the records, books and papers in his possession or under his control belonging to the office held by him, which oath may be administered by the officer to whom such delivery shall be made, and shall, at the same time, pay over to his successor the moneys belonging to the town remaining in his hands. If any such officers shall have died, the successors or successor of such officer shall make such demand of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon the like oath, all records, books and papers in their possession, or under their control, belonging to the office held by their testator or intestate. If any person so going out of office, or his executors or administrators, shall refuse or neglect, when lawfully required, to deliver such records, books or papers, he shall forfeit to the town, for every such refusal or neglect, the sum of two hundred and fifty dollars; and officers entitled to demand such records, books and papers may compel the delivery thereof in the manner prescribed by law.

Town Law, § 84.

§ 8. **Compensation of town officers.**—The following town officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the town, in the duties of their respective offices, when no fee is allowed by law for the service: The supervisor, except when attending the board of supervisors, town clerks, assessors, commissioners of highways, justices of the peace, overseers of the poor, inspectors of election, and clerks of the polls, two dollars per day, each of them.

Town Law, § 178.

§ 9. **Poor defined.**—A poor person is one unable to maintain himself, and such person shall be maintained by the town, city, county or State, according to the provisions of this chapter. In counties having but one superintendent of the poor, the term

Pasteur institute.

“superintendent” or “superintendents of the poor,” when used in this chapter, means such superintendent; and in towns or cities having but one overseer of the poor, the term “overseers” or “overseers of the poor,” when used in this chapter, means a town or city overseer of the poor. An “almshouse” is a place where the poor are maintained at the public expense.

The town poor are such persons as are required by law to be relieved or supported at the expense of the town or city; the county poor are such persons as are required by law to be relieved or supported at the expense of the county; and the State poor are such persons as are required by law to be relieved or supported at the expense of the State.

Poor Law, § 2; 2 R. S. 2294.

In the absence of express statutory provisions there is no obligation or duty imposed upon towns to contribute to the support of persons residing within their limits.

People v. Supervisors, 121 N. Y. 345.

A husband who has voluntarily permitted his insane wife to absent herself from his house and to become a public charge is liable in an action at the suit of the proper town or county officers for her support and is estopped from denying, in such action, that she is a pauper.

Such an action cannot be defended upon the ground that the wife abandoned her husband, as an insane wife is incapable of so doing and it is the duty of the husband to protect and support her.

Goodall v. Lawrence, 88 N. Y. 513.

The following are authorities defining poor persons, indigent persons, paupers, etc.:

City of Charleston v. Groveland, 15 Gray, 15; Hutchings v. Thompson, 10 Cushing, 239, 22 Am. & Enc. of Law, 2nd ed. 947 and cases; Matter of McCutcheon, 25 Misc. 650.

As to the statute relating to the support of poor relations, see Code Criminal Procedure, § 914.

An almshouse is defined as a place where the poor are maintained at the public expense.

People ex rel. French v. Like, 159 N. Y. 149.

1. **Patients sent to Pasteur institute.**—Overseers of the poor or other officers having charge of the dispensation of public charity in the several counties of this State shall hereafter send to the Pasteur institute in the city of New York all persons duly

Relief in certain counties.

certified by regular physicians to have been bitten by rabid animals, or otherwise put in danger of infection with rabies.

2. **Transportation, cost of.**—The transportation of such persons, with necessary attendant or attendants, to and from the city of New York, shall be a charge upon the counties in which they reside. The sustenance, nursing and preventive treatment of such persons, for the time adjudged necessary, shall be provided by the Pasteur institute of the city of New York.

3. **Appropriation.**—The sum of six thousand dollars is hereby appropriated to be paid to the Pasteur institute of the city of New York as a full equivalent for the services named in this bill and conditions imposed thereby.

4. **Institute open to inspection.**—The Pasteur institute of the city of New York shall be at all times open to the inspection of the governor and of the State board of health or of the accredited representative of either, and shall annually, on or before the fifteenth of January of each year make its report to the legislature.

5. All acts and parts of acts inconsistent with this act are hereby repealed.

6. This act shall take effect immediately.

Laws 1895, chap. 770.

§ 10. **Relief in counties having almshouses.**—When any person shall apply for relief to an overseer of the poor, in a county having an almshouse, such overseer shall inquire into the state and circumstances of the applicant; and if it shall appear that he is a poor person, and requires permanent relief and support, and can be safely removed, the overseer shall, by written order, cause such poor person to be removed to the county almshouse, or to be relieved and provided for, as the necessities of the applicant may require. If the county be one where the respective towns are required to support their own poor, the overseer shall designate in such order of removal, whether such person be chargeable to the county or not; and if no such designation be made, such person shall be deemed to belong to the town whose overseer made such order.

Poor Law, § 20. See form of order below.

Relief in certain counties.

ORDER OF THE OVERSEERS OF A TOWN TO REMOVE A POOR PERSON TO THE COUNTY POOR HOUSE.

County of, ss.:

., having applied for relief to the overseers of the poor of the town of, who having inquired into the state and circumstances of the applicant, and it appearing that he (or she) is in such circumstances as to require permanent relief and support, and can be safely removed, the undersigned overseers hereby order the said to be removed to the county almshouse, to be relieved and provided for, as the necessities of such applicant may require, at the expense of the said county (or town, if in a county where the towns are required to support their own poor).

Given under our hands, at, this . . . day of, 19..

Overseers of the Poor.

Where the overseer of the poor upon inquiry into the state and circumstances of a minor has never adjudged that he was in such indigent circumstances as to require permanent relief and support, nor by his written or any other order or in any other manner caused him to be removed to the county poorhouse to be relieved and provided for as his necessities might require, he cannot be said to have been sent to the county poorhouse so as to authorize the superintendent to bind him out.

People ex rel. Bentley v. Hanna, 3 How. 39.

In the absence of statutory provision there is no obligation or duty imposed upon towns to contribute to the support of persons residing within their limits.

People ex rel. Blenheim v. Supervisors, 121 N. Y. 345.

Where permanent relief is asked for the overseer should remove the poor person to the county poorhouse when the poor person is to be supported at the expense of the town sending him.

Nuns of St. Dominick v. L. I. City, 48 Hun, 306.

The overseer may furnish support to a person needing permanent relief until he is removed to the poorhouse.

Robinson v. Wolcott, 66 Barb. 63.

The statutes do not permit or authorize any discrimination between county and town poor. The legislature intended the income should be applied to the support of the poor of the county generally at the poorhouse without distinction.

City of Rochester v. Supervisors, 22 Barb. 248.

Title 8, part 6, of the Code of Criminal Procedure, provides a particular scheme for the support and maintenance of a particular class of persons unable to maintain themselves or persons who have relatives within prescribed degrees who are of sufficient ability to relieve and maintain them.

Matter of Weaver v. Benjamin, 45 S. R. 95.

Where the applicant requires only temporary relief a sum of money not exceeding \$10 after notice to the supervisor of the town and upon his order may be expended for such temporary relief.

Smith v. Williams, 13 Misc. 761.

If the expenditure of a greater sum than \$10 is required the written sanction of one of the county superintendents of the poor must be obtained therefor.

Id.

Poor Law, § 21.

Removal and relief.

§ 11. **Expense of removal, and temporary relief.**— Unless such poor person is properly chargeable to the town, the overseer, in addition to the expense of such removal, shall be allowed such sum as may have been necessarily paid out, or contracted to be paid, for the relief or support of such poor person, previous to such removal and as the superintendent shall judge was reasonably expended while it was improper or inconvenient to remove such poor person, which sum shall be paid by the county treasurer, on the order of the superintendent.

Poor Law, § 21; see form below.

SUPERINTENDENTS' ORDER TO PAY EXPENSES INCURRED BY OVERSEERS PREVIOUS TO THE REMOVAL OF A POOR PERSON.

To the Treasurer of the county of:

Pay to and, overseers of the poor of the town of, in said county, ... dollars, a sum which was necessarily paid out, or contracted to be paid, for the relief or support of, a pauper, previous to his removal to the county poorhouse, and which sum the undersigned, superintendents of the poor of said county, judged was reasonably expended by the said overseers, before the said pauper could properly be removed. and charge the same to the county (or, if a town pauper, to the town of in said county).

Given under our hands, at this day of, 19..

.....
.....

Superintendents of the Poor.

§ 12. **How supported and when discharged.**— The person so removed shall be received by the superintendents, or their agents, and be supported and relieved in a county almshouse until it shall appear to them that such person is able to maintain himself, or, if a minor, until he is bound out or otherwise cared for, as hereafter provided, when they may, in their discretion, discharge him.

Poor Law, § 22.

§ 13. **Temporary relief.**— If it shall appear that the person so applying requires only temporary relief, or is sick, lame or otherwise disabled so that he cannot be conveniently removed to the county almshouse, or that he is a person who should be relieved and cared for at his home under article five of this chapter, the overseers shall apply to the supervisor of the town, who shall examine into the facts and circumstances, and shall, in writing, order such sum to be expended for the temporary relief of such poor person, as the circumstances of the case shall require, which order shall entitle the overseer to receive any sum he may have paid out

Removal and relief.

or contracted to pay, within the amount therein specified, from the county treasurer, to be by him charged to the county, if such person be a county charge, if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars shall be expended or paid for the relief of any one poor person, or one family, without the sanction, in writing, of one of the superintendents of the poor of the county, which shall be presented to the county treasurer, with the order of the supervisor, except when the board of supervisors has made rules and regulations as prescribed in section thirteen of this chapter.

Poor Law, § 23. See forms below.

SUPERVISOR'S ORDER FOR A PERSON WHO REQUIRES TEMPORARY RELIEF.

The overseers of the poor of the town of, having applied to the undersigned, a supervisor of said town, relative to, a person applying to them for relief, and having examined into the facts and circumstances, and it appearing that the said so applying, requires only temporary relief (or, is sick, lame, or otherwise disabled, so that he or she can not be conveniently removed to the county almshouse), the undersigned hereby orders the said overseers to apply dollars per week for the relief of the said until they have expended the sum of ten dollars, or such sum less than that amount as may be found sufficient for the temporary relief of the said poor person, ...

Given in said town, the day of, 19..

.....
Supervisor.

SANCTION OF COUNTY SUPERINTENDENT FOR THE EXPENDITURE OF A GREATER SUM THAN TEN DOLLARS.

County of ss.:

The undersigned, one of the superintendents of the poor of the county of, having been applied to by the overseers of the poor of the town of, in said county, to give his sanction for the expenditure of a greater sum than ten dollars for the relief of, as authorized by the supervisor's order hereunto annexed, and having inquired into the facts of the case, and being satisfied that the said cannot be properly removed to the county almshouse, and that he is in need of further relief, hereby gives his sanction to the continuance of the weekly allowance specified in said order, until the expenditure amounts to dollars over and above the sum of ten dollars authorized by the supervisor's order in this case and to be charged to the county (or town), as specified in said order.

Given under my hand at this day of, 19..

.....
Superintendent of the Poor.

The statute provides a guard against extravagant or improper expenditure by providing that relief shall be furnished only upon an order of a justice of the peace.

Osterhoudt v. Rigney. 98 N. Y. 222.

If temporary relief only is sought \$10 a year can be expended.
Nuns of St. Dominick v. L. I. City, 48 Hun, 306.

Relief in certain counties; examinations, etc.

§ 14. **Relief in counties having no almshouses.**— If application for relief be made in any county where there is no county almshouse, the overseer of the poor of the town where such application is made shall inquire into the facts and circumstances of the case, and with the written approval of the supervisor of such town, make an order in writing for such allowance, weekly or otherwise, as they shall think required by the necessities of such poor person. If such poor person has a legal settlement in such town, or in any other town in the same county, the overseer shall apply the moneys so allowed to the relief and support of such poor person. The money so paid by him, or contracted to be paid, when the poor person had no legal settlement in the town, and charged to the town in which he had a legal settlement, shall be drawn by such overseer from the county treasurer on producing such order. If such person has no legal settlement in such county, the overseer shall, within ten days after granting to him any relief, give notice thereof, and that such person has no legal settlement in such county, to one of the county superintendents, and until the county superintendents shall take charge of the support of such poor person, the overseer shall provide for his relief and support, and the expense thereof from the time of giving such notice shall be paid to such overseer by the county treasurer, on the production of such order and of proof by affidavit of the time of the giving of such notice, and shall be by him charged to the county.

Poor Law, § 24.

In counties where there is no poor house an overseer is authorized to make an order for the allowance of such sum weekly or otherwise as the necessities of the poor person may require. The overseer has absolute control of the funds placed in his hands from the respective towns and is liable only for moneys not lawfully appropriated.

Robins v. Wolcott, 66 Barb. 63.

§ 15. **Overseer to make monthly examinations and audit accounts.**— The overseer of the poor of a town or city shall at least once each month, examine into the condition and necessities of each person supported by the town or city out of the county almshouse and provide within the provisions of this chapter for such allowances, weekly or otherwise, as the circumstances may in his judgment require. All accounts for care, support, supplies or attendance, connected with the maintenance of such poor person or family, shall be settled once in three months, and paid if there

Keep books of account.

be funds for that purpose. No bill, claim or account for care, support, supplies or attendance, furnished to poor persons, by order of the overseer of the poor, or otherwise, shall be audited or allowed by the overseer, unless such bill, claim, or account be verified by the claimant, to the effect that such care, support, supplies or attendance have been actually furnished for such poor persons, that such poor persons have actually received the same, and that the prices charged therefor are reasonable, and not above the usual market rates.

Poor Law, § 25; see form below.

ORDER FOR SUPPLIES TO POOR PERSONS AND VERIFICATION OF ACCOUNTS FOR
AUDIT.

Brighton, N. Y., ..., 190..

To.....:

Please furnish to....., the articles named in the following schedule, in the quantities and to the amount therein specified, not exceeding a total of.....dollars, and charge the same to the account of the town of Brighton, N. Y.

.....,
Overseer of the Poor.

§ 16. **Overseers to keep books of accounts.**—Overseers of the poor, who receive and expend money for the relief and support of the poor in their respective towns and cities, shall keep books to be procured at town or city expense, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such relief necessary, so far as the same can be ascertained. They shall also enter upon such books a statement of the name and age, and of the names and residences of the parents of every child who is placed by them in a family, with the name and address of the family with whom every such child is placed, and the occupation of the head of the family. They shall also enter upon books so procured, a statement of all moneys received by them, when and from whom, and on what account received, and of all moneys paid out by them, when and to whom paid and on what authority, and whether to town, city or county poor; also a statement of all debts contracted by them as such overseers, the names of the persons with whom such debts were contracted, the amount and consideration of each item, the names of the persons for whose benefit the debts were contracted, and if the same have been paid, the time and manner of such payment. The overseers shall lay

Keep books of account.

such books before the board of town auditors or the common council of the city, at its first annual meeting in each year and, upon being given ten days' notice thereof, at any adjourned or special meeting of such board or council, together with a just, true and verified itemized account, of all moneys received and expended by them for the use of the poor since the last preceding annual meeting of said board, and a verified statement of debts contracted by them as such overseer and remaining unpaid. The board or council shall compare said account with the entries in the book, and shall examine the vouchers in support thereof, and may examine the overseers of the poor, under oath, with reference to such account. They shall thereupon audit and settle the same, and state the balance due to or from the overseer, as the case may be. Such account shall be filed with the town or city clerk, and at every annual town meeting, the town clerk shall produce such town account for the next preceding year, and read the same, if it be required by the meeting. The overseers of the town shall have such books present each year at the annual town meeting, subject to the inspection of the voters of the town, and the entries thereon for the preceding year shall there be read publicly at the time reports of other town officers are presented, if required by a resolution of such meeting. No credit shall be allowed to any overseers for moneys paid, unless it shall appear that such payments were made necessarily or pursuant to a legal order.

Poor Law, § 26, as am'd by chap. 222, Laws of 1897; see form below.

ACCOUNTS OF OVERSEERS OF THE POOR TO BE RENDERED TO TOWN BOARDS OR
COMMON COUNCIL.

To the Town Board of the town of..... :

Account of....., overseer of the town of Brighton, for amounts received and expended for the support and relief of the poor during the year ending....., 190..

Receipts.

June 10.	From county treasurer.....	\$15 00
Sept. 15.	From, for sale of property of....., who had absconded.....	15 50

Expenditures.

June 15.	To Richard Roe, for groceries.....	\$15 00
Sept. 16.	To county treasurer, pursuant to Poor Law, § 135.....	16 50

Annual report.

Monroe County, ss.:

....., overseer of the poor of the town of Brighton, being duly sworn, deposes and says that the foregoing account is just and true; that the amount stated therein to have been received for the support and relief of the poor is all that has been received by him during the year ending....., 190.., and that the amounts stated to have been expended were actually and necessarily expended by him for the purposes specified, during such time.

.....,
Overseer of the Poor.

Subscribed and sworn to before me,
 this.....day of....., 190..

.....
Notary Public.

The statute regulating the manner of auditing accounts of overseers of the poor prescribes that no credit shall be allowed unless such payment was made pursuant to legal order of a justice of the peace. The board ought to pursue the method pointed out by the statute, but a departure from a directory provision does not render the audit void.

Osterhoudt v. Rigney, 98 N. Y. 222.

The books must be laid before the board of town auditors with all accounts of the moneys received and paid out. The boards should compare such accounts with the entries in the books, examine the vouchers, etc., and audit and settle the same, and strike the balance due from or to such overseers as case may be, and no credit should be allowed unless the moneys were paid pursuant to a legal order.

Robbins v. Wolcott, 66 Barb. 63.

§ 17. **Annual report of overseers.**—Such overseers shall make to the town board, at its second annual meeting in each year, a written report, stating their account as provided in the last section, continued to that date, and any deficiency that may then exist in the town poor fund, with their estimate of the sum which they shall deem necessary for the temporary and outdoor relief and support of the poor in their town for the ensuing year, and in counties where there is no county almshouse, their estimate of such sum as they shall deem necessary to be raised and collected therein for the support of the poor for the ensuing year. If such board shall approve the statement and estimate so made or any part thereof, they shall so certify in duplicate, one of which certificates shall be filed in the office of the town clerk, and the other shall be laid by the supervisor of the town, before the board of supervisors of the county, on the first day of its next annual meeting. The board of supervisors shall cause the amount of such deficiency and estimates, as so certified, together with the sums voted by such town for the relief of the poor therein to be levied and collected in such town, in the same manner as other town charges, to be paid to the overseers of the poor of such town,

In cities.

and the warrants attached to the tax-rolls in such county shall direct accordingly. The moneys so raised shall be received by such overseers, and applied toward the payment of such deficiency, and for the maintenance and support of the poor, for whose relief such estimates were made. The town board shall also, on or before the first day of December, annually certify to the county superintendents, the name, age, sex and native country, of every poor person relieved and supported by such overseers during the preceding year, with the causes which shall have operated to render them such poor persons, the amount expended for the use of each person, as allowed by the board, and the amount allowed to each overseer for services rendered in relation to temporary or town relief.

The town board shall include in such annual statement to the county superintendents and the county superintendents shall include in their own report to the State board of charities a statement of the name and age, and of the names and residence of the parents of every child who has been placed by such overseers in a family during the preceding year, with the name and address of the family with whom each child is placed, and the occupation of the head of the family.

Poor Law, § 27.

The method of supporting the poor has been for the overseers to procure supplies upon their own credit and to present their account annually to the board of audit for allowance, and the amount audited was put into the schedule of accounts and levied by the supervisors with other town charges, the collection to be paid to the overseers.

Osterhoudt v. Rigney, 98 N. Y. 222.

The overseer is not bound to furnish supplies on his own credit. The funds should be provided for in advance.

Id.

The overseer should present to the town meeting his estimate, and the town meeting should determine the amount to be assessed.

Id.

§ 18. **Overseers of the poor in cities.**— This chapter shall apply to overseers of the poor in cities, except where otherwise specially provided by law. In the absence of such special provision, overseers of the poor in each city shall make their report to the auditing board of such city, by whatever name known, at the beginning of the fiscal years of such city, if such time be fixed, otherwise on the first day of January in each year; the common councils of such cities as shall be liable for the support of their own

Hospital accommodations, etc.

poor shall yearly determine the sum of money to be appropriated for the ensuing year, and a certified copy of such determination shall be laid before the board of supervisors of the county, who shall cause the same to be assessed, levied, collected and paid to the county treasurer.

Poor Law, § 29; 2 R. S. 2301.

§ 19. **Hospital accommodations for indigent persons.**—In all counties of this state in which there are not adequate hospital accommodations for indigent persons requiring medical or surgical care and treatment, or in which no appropriations of money are made for this specific purpose, it shall be the duty of county superintendents of the poor, upon the certificate of a physician approved by the board of supervisors, or of the overseers of the poor in the several towns of such counties, upon the certificate of a physician approved by the supervisor of the town, as their jurisdiction over the several cases may require, to send all such indigent persons requiring medical or surgical care and treatment to the nearest hospital, the incorporation and management of which have been approved by the state board of charities, provided transportation to such hospital can be safely accomplished. The charge for the care and treatment of such indigent persons in such hospitals, as herein provided, shall not exceed one dollar per day for each person, which shall be paid by the several counties or towns from which such persons are sent, and provision for which shall be made in the annual budgets of such counties and towns.

Poor Law, § 30.

§ 20. **Boards of supervisors may abolish or revive distinction between town and county poor.**—The board of supervisors of any county may, at an annual meeting or at a special meeting called for that purpose, by resolution, abolish or revive the distinction between town and county poor of such county, by a vote of two-thirds of all the members elected to such board, and until such abolition or revival, such county, or the towns therein, shall continue to maintain and support their poor as at the time when this chapter shall take effect. The clerk of the board shall, within thirty days after such determination, serve, or cause to be served, a copy of the resolution upon the clerk of each town, village or city within such county and upon each of the superintendents and

When to pay money to county treasurer.

overseers of the poor therein. Upon filing such determination to abolish the distinction between town and county poor, duly certified by the clerk of the board, in the office of the county clerk, the poor of the county shall thereafter be maintained, and the expense thereof defrayed, by the county; and all costs and charges attending the examinations, conveyance, support and necessary expenses of poor persons therein, shall be a charge upon the county. Such charges and expenses shall be reported by the superintendent of the poor, to the board of supervisors, and shall be assessed, levied and collected the same as other county charges.

Poor Law, § 134.

In order to render the expense of maintaining all the poor of a county a county charge, the board of supervisors must not only determine to abolish the distinction between county and town poor, but must file such determination with the county clerk.

Until such determination be filed, the duties of the officers arising out of such change in the poor system do not attach.

Such filing cannot be proved by parol unless it be first shown that primary evidence cannot be obtained. The service of the resolution of the board of supervisors on the town clerks is not essential to effect a change of system, such provision being only directory.

Thompson v. Smith, 2 Denio, 177.

By the general law state boards of supervisors have power at will to abolish or revive distinctions existing in their counties between town and county poor; they also had the power to abolish such distinction and make the support of all the poor of the county a county charge.

Peope ex rel. Sup. v. Supervisors, 103 N. Y. 541.

§ 21. **Overseers, when to pay money to county treasurer.**—Within three months after notice shall have been served upon the overseers of the poor, that the distinction between town and county poor has been abolished, they shall pay over all moneys which shall remain in their hands as overseers for the use of their town, after discharging all demands against them, to the county treasurer, to be applied by him toward the future taxes of such town; and all moneys thereafter received by them, as such overseers, for the use of the poor of their town, shall be paid by them to the county treasurer within three months after receiving the same, and by him credited to the town whose overseer shall have paid the same. It shall be the duty of all officers or persons to pay to the county treasurer all moneys which shall be received for, or owing by them to the overseers of the poor of any such town, for the use of the poor thereof, pursuant to any law or obligation requiring the same to be paid to such overseer, and credited by such county treasurer to the town for

Town money; report by supervisors.

whose use such moneys were received or owing. Any overseer or other person having received or owing such moneys, who shall neglect or refuse to pay the same within thirty days after demand thereof, shall be liable to an action therefor, with interest at the rate of ten per cent. thereon, by such county treasurer, in the name of his county.

Poor Law, § 135.

§ 22. **Invested town money.**—When any town shall have any moneys raised for the support of the poor, invested in the name of the overseers of the poor of such town, such overseers shall continue to have the control thereof, and shall apply the interest arising therefrom to the support of the poor of their town, so long as such town shall be liable to support its own poor, but when relieved from such liability by a vote of the supervisors of the county, the money so raised and invested shall be applied to the payment of such taxes upon the town, as the inhabitants thereof shall at an annual town meeting, or a special town meeting called for that purpose, determine.

Poor Law, § 136.

§ 23. **Report by supervisors.**—The supervisor of every town in counties where all the poor are not a county charge, shall report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the town board at its first annual meeting in each year, an abstract of all such accounts, which shall exhibit the number of poor persons that have been relieved or supported in such town the preceding year, specifying the number of county poor, and town poor, the whole expense of such support, the allowance made to overseers, justices, constables or other officers, which shall not comprise any part of the actual expenses of maintaining the poor.

Poor Law, § 137; see form below.

Form of report:

TO THE CLERK OF THE BOARD OF SUPERVISORS:

The undersigned, supervisors of the town of, in the county of, respectfully reports as follows:

The number of poor supported relieved in the town of during the year ending the day of, 190., as appears from the accounts of the overseers of the poor was.....

Of these, the number of county poor was.....

“ “ town “

The whole expense of such support was.....\$

Poor fund may go to schools, etc.

Of this sum there was paid for transportation of the poor.....
 Allowance made to overseers for their services.....
 " " justices.....
 " " keepers and officers.....
 " " physicians for services and medicines.....
 " " overseers for support of county poor.....
 " " for town poor.....

The actual value of the labor of the poor maintained was.....
 Estimated amount saved in the expense of their support, in consequence of their labor, was.....
 [Insert any other charges there may be.]

Of the whole number of poor relieved by the overseers, there were foreigners, ... lunatics, ... idiot and mutes. The number of poor under their charge, at the time of auditing their accounts, was; of which were males and females. The vested poor money of said town amounts to dollars. The sum raised by tax upon the town, for the support of the poor for the year preceding this report, was dollars.

I certify that the foregoing is a correct abstract of the accounts of the overseers of the poor of the town of, for the year ending the day of, 190., as they were settled by the town board.

Dated, the day of, 190..

.....
 Supervisor.

§ 24. **Town poor fund may be diverted.**—It shall be lawful for the inhabitants of any town in such counties as have abolished the distinction between county and town paupers, and in such counties as may hereafter abolish such distinction, at any annual or special town meeting to appropriate all or any part of the moneys and funds remaining in the hands of the overseers of the poor of such town after such abolition, to such objects, and for such purposes, as shall be determined on at such meeting.

Laws 1829, chap. 287, § 1.

§ 25. **May go to school fund.**—If any such meeting shall appropriate such money or funds for the benefit of common schools in their town, the money so appropriated shall be denominated "The common school fund of such town," and shall be under the care and superintendence of the commissioners of common schools* of said town.

Laws 1829, chap. 287, § 2.

§ 26. **Money, etc., to go to supervisor.**—If any such meeting shall appropriate such money or funds for the benefit of common schools, after such appropriation shall have been made, and after

* This is now vested in supervisor

Supervisor's duties as to school fund.

the commissioners of common schools shall have taken the oath of office, the overseers of the poor of such towns shall then pay over and deliver to the said commissioners* such moneys, bonds, mortgages, notes and other securities, remaining in their hands as such overseers of the poor, as will comport with the appropriation made for the benefit of common schools of their town.

Laws 1829, chap. 287, § 3.

§ 27. **Supervisor may sue therefor.**—The said commissioners (now supervisors) may sue for and collect in their name of office, the money due or to become due on such bonds, mortgages, notes or other securities, and also all other securities by them taken under the provisions of this act.

Laws 1829, chap. 287, § 4.

§ 28. **Continue permanent school fund.**—The moneys, bonds, mortgages, notes and other securities aforesaid, shall continue and be a permanent fund, to be denominated the common school fund of the town appropriating the same, the annual interest of which shall be applied to the support of common schools in such towns, unless the inhabitants of such town, in annual town meeting, shall make a different disposition of the whole of the principal and interest, or any part thereof, for the benefit of the common schools of such town.

Laws 1829, chap. 287, § 5.

§ 29. **Supervisors may loan money, when — Secured by mortgages.**—The said commissioners of common schools whenever the whole or any part of the principal of said fund shall come to their hands, shall loan the same on bond, secured by a mortgage on real estate of double the value of the moneys so loaned, exclusive of buildings or artificial erections thereon.

Laws 1829, chap. 287, § 6.

§ 30. **Foreclosure of such mortgages.**—The said commissioners of common schools (now supervisors) may purchase in the estate on which the fund shall have been secured, upon the foreclosure of any mortgage, and may hold and convey the same for the use of said fund.

Laws 1829, chap. 287, § 7.

§ 31. **Interest, how to be applied.**—The said commissioners of common schools (now supervisors) shall retain the interest of

Account and form of report.

said common school fund, which shall be distributed and applied to the support of common schools of such town, in like manner as the public money for the support of common schools shall be distributed by law.

Laws 1829, chap. 287, § 8.

§ 32. **Supervisors to account annually.**—The said commissioners of common schools (supervisors) shall account annually, in such manner and at such time as town officers are required by law to account, and shall deliver to their successor in office all moneys, books, securities and papers whatsoever, relating to said fund, and shall take a receipt therefor, and file the same with the town clerk.

Laws 1829, chap. 287, § 9.

§ 33. **Account of the overseer of the poor.**—The following is an account of moneys received and expended together with the name, age, sex, nativity and cause of pauperism of each person relieved or supported by the overseer of the poor of the town of

Names of Paupers.	Age.	Sex.	Place of Nativity.	Cause of Pauperism	Date of Order for Relief	Amt. Expended for each pauper.
Louise Barnes...	22	Female	Canada	Disease	Oct. 15, '91	\$23 50
Patrick Murphy.	78	Male	Ireland	Old age	May 30, '00	25 00
Camille Fouquet.	31	Male	France	Intemp'rance	Dec. 4, '00	4 75
Toni Bonafedi...	42	Male	Italy	Idiocy	Feb. 20, '01	10 25
Fritz Schmidt...	25	Male	Germany	Disease	July 21, '00	18 00
Bertha Napier...	31	Female	Scotland	Debauchery	Jan. 2, '01	7 65

Form of report and additional certificate by town board.—

The undersigned submits the following report as prescribed by section 27 of the Poor Law:

[Here state the account as in the last section, brought down to date, and continue.]

There is a deficiency in the town poor fund of..... \$

For the ensuing year there will be necessary for temporary and outdoor relief the sum of.....

[If there is no county almshouse add the following:]

There will be necessary for the support of the poor for the ensuing year the sum of.....

Dated, 190..

(Signed.)

.....
Overseer of the Poor.

Certificate by town board.

CERTIFICATE.

We hereby approve the statement and estimate of the overseer of the poor of the town of, contained in the annexed report.
Dated, ..., 190..

(Signed.)

.....
.....
.....
Town Board.

One of the reports and certificates so signed should be filed in the town clerk's office and the other given to the supervisor for delivery to the board of supervisors.

Additional certificate by town board.—

On or before December first of each year the town board should send to the superintendent of the poor the following certificate:

To the Hon. _____, Superintendent of the Poor of the
County of _____ :

The undersigned, members of the town board of the town of _____, in said county, do hereby certify:

The following are the names, age, sex and native country of every poor person relieved and supported by the overseers of the poor of said town during the preceding year, with the causes which have operated to render them such poor persons, and the amount expended for the use of each person as allowed by the board:

NAMES.	Age.	Sex.	Native country.	Causes.	Amt. allowed for expenses of each person.

We have allowed the overseers named below, for their services rendered in relation to temporary or town relief, the several sums set opposite their names:

To

the sum of

\$

To

the sum of

To

the sum of

The following is a statement of the name and age, and of the names and residence of the parents, of every child who has been placed by such overseers in a family during the preceding year, with the name and address of the family with whom each child is placed and the occupation of the head of the family, viz.:

Register; care of poor.

NAME OF CHILD.	Age of child.	Names of child's parents.	Residence of child's parents.	Name of the family with whom placed.	Address of family with whom placed.	Occupation of the head of such family.

Dated, 19 .

(Signed.)

.....
.....
.....

Town Board.

34. **Register of sex and age.**—In addition to the general register of the inmates of the various almshouses, there shall be kept a record of the sex, age, birthplace, birth of parents, education, habits, occupation, condition of ancestors and family relations, and cause of dependence of each person at the time of admission, with such other facts and particulars in relation thereto as may be required by the State board of charities, upon forms prescribed and furnished by such board. Superintendents and overseers of the poor, and other officers charged with the relief and support of poor persons, shall furnish to the keepers or other officers in charge of such almshouses, as full information as practicable in relation to each person sent or brought by them to such almshouse, and such keepers or other officers shall record the information ascertained at the time of the admission of such person, on the forms so furnished. All such records shall be preserved in such almshouses, and the keepers and other officers in charge thereof shall make copies of the same on the first day of each month, and immediately forward such copies to the State board of charities.

Poor Law, § 138.

§ 35. **Care of poor persons not to be put up at auction.**—No officer or persons whose duty it may be to provide for the maintenance, care or support of poor persons at public expense, shall put up at auction or sale, the keeping, care or maintenance of any such poor person to the lowest bidder, and every contract which may be entered into in violation of this provision shall be void.

Poor Law, § 139.

Certain reports.

§ 36. **Reports of certain other officers.**—The provisions of this chapter, relating to reports by superintendents of the poor, to the State board of charities, and the penalties applicable thereto, are hereby extended to, and made applicable to the commissioners of public charities for the city and county of New York, the superintendent of the almshouse of the county of Albany, the keeper of the almshouse of the county of Putnam, the commissioners of the almshouse elected in the cities of Newburgh and Poughkeepsie, and all poor officials elected or appointed in other cities of this State, under general or special acts of the legislature.

Poor Law, § 140.

§ 37. **Reports with relation to children placed in family homes.**—The superintendents of the poor of counties, the overseers of the poor of cities and towns and all other public officers by whatsoever name or title known who are authorized by law to place out dependent children in family homes by adoption, indenture or otherwise, are hereby required to report to the state board of charities on blanks provided by such board, the particulars with relation to each child so placed out. Such report shall state the name, age and sex of the child so placed out, together with the father's full name and residence, the mother's full name and residence, and the religious faith of the parents. The report shall also state the full names and residence of the heads of the family with whom such child is placed, their relationship to the child, if any, the religious faith of the heads of such family, and their occupation or occupations, together with such further information as the State board of charities may require on the blanks provided. Such reports for the preceding month shall be filed with the state board of charities on or before the tenth day of each month.

Poor Law, § 141, as am'd Laws 1905, chap. 273.

§ 38. **Report of State board of charities.**—The State board of charities shall include in its annual report to the legislature the results of the information obtained from the reports to be made to it as herein provided. It shall also, from time to time, furnish to the officials so required to report to it, necessary forms, blanks and instructions required in making up such reports.

Poor Law, § 142.

Conveyance of real property; etc.

§ 39. **Supervisor may accept conveyance of real property.**—The supervisor of a town may as such official accept a deed or conveyance of real property or mortgage thereon in behalf of the town, and sell and convey such real property or mortgage the same after the expiration of one year from the date of such conveyance or mortgage for the care and maintenance of a poor person. No such deed or conveyance shall be accepted by him, unless by the written consent of the town board given at any regular meeting thereof. Such consent shall be filed in the office of the town clerk. The person or persons giving such deed or mortgage may within one year from the date of such conveyance or mortgage secure a conveyance or cancellation of said deed or mortgage upon payment to said supervisor of the expense incurred by such town for taxes and necessary repairs on said property and also in maintaining such person or persons.

Poor Law, § 143, added by Laws 1902, chap. 117.

§ 40. **Leaving children or wife a public charge — How proceeds of property applied.**—Whenever the father, or the mother being a widow or living separate from her husband, has absconded or shall abscond from his or her children or a husband from his wife, leaving any of such children or such wife chargeable, or likely to become chargeable, upon the public for their support, and any real or personal estate of such father, or mother, or husband, has been or shall be seized by a superintendent of the poor or an overseer of the poor, or by a board of charities (or by other officers authorized to make such seizure), by warrant of the justices of the peace of the county where such real or personal property may be situated, and the court of sessions of the county wherein such superintendent or overseer of the poor or board of charities, or other officers authorized to make such seizure resides, has confirmed, or shall confirm said warrant and seizure and has heretofore directed, or shall hereafter direct what part of any of the said personal property shall be sold and how much, if any, of the proceeds of such sale and of the rents and profits of the real estate, if any, be applied toward the maintenance of the children or wife of the person so absconding, then the said superintendent or overseer of the poor, board of charities or other officer so authorized and directed, shall apply the said proceeds of sale of said personal property, or rents and profits of the real estate (as the case may be): First, to the

Guardians for minors.

payment of such taxes and assessments as may be outstanding and existing liens upon the said real estate, and repairs necessary to be made upon said real estate; and premiums for insurance on the buildings on said real estate and the balance, if any, directly to the maintaining, bringing up and providing for the wife, child or children so left and abandoned, as the same may be required from time to time; and for all of such expenditures they shall take proper vouchers, and from the rents and profits thereafter received from any real estate so seized they shall first pay all legal taxes and assessments, as they shall be assessed against said real estate and such premiums for insurances and expenses for such repairs thereon as they may deem necessary for the protection and preservation of said real estate, and the balance of said rents and profits shall be applied by said overseers, superintendents, boards of charities, or other persons authorized to make such seizures, to the maintaining, bringing up, and providing for the wife, child, or children so left and abandoned, and proper vouchers shall be taken thereof.

Laws 1878, chap. 304, § 1.

§ 41. **Guardians for minors — Care of fund — Security — Accounting.**—Whenever any child or children, entitled to the benefits provided by this act, shall be a minor or minors whose mother is dead and whose father has absconded from his children, or whose mother, being a widow or living apart from her husband, has absconded from her children, and such minor or minors shall have no guardian, the court of sessions having jurisdiction of this matter shall appoint some suitable person guardian *ad litem* or next friend of such minor or minors, whose duty it shall be to see that the provisions of this act are carried into effect. The proceeds of the sale of said personal property and the rents and profits of said real estate shall not be mingled or placed with any other funds held or owned by the officer or officers receiving the same, but shall be kept separate and distinct. Such superintendent, overseer of the poor, board of charities or other authorized officer shall give security for the faithful performance of the duties hereby imposed in such form and in such sum as the aforesaid court may direct, and shall account to the court of sessions for all moneys so received by them and for the application thereof from time to time and may be compelled by the said court to render such account at any time.

Laws 1878, chap. 304, § 2.

Accounting, penalties, recovery from pauper.

§ 42. **Accounting — Person appointed to represent minors.**— Notice of such accounting shall be given to the wife or children, so left and abandoned, as the case may be, and to the guardian of such children, if any of them be minors. And in the event that no guardian or next friend has been appointed, as hereinbefore provided, the said court shall, prior to such accounting being had, appoint some suitable person to attend upon such accounting in behalf of said minors, and notice of such appointment and of such accounting shall be given to the person so appointed.

Laws 1878, chap. 304, § 3.

§ 43. **Penalties, how applied.**— All penalties received from the prosecution of any recognizance given by any person who shall have abandoned or neglected his wife or children, or who shall have threatened to run away and leave his wife or children a burden on the public, shall be retained by the officer at whose instance such recognizance was prosecuted, and applied for the same purpose and in the same manner as in the first section of this act provided for the disposition of the proceeds of the sales of personal property and the rents and profits of real estate seized under the provisions of this act.

Laws 1878, chap. 304, § 4.

§ 44. **Recovery from pauper who has money.**— If it shall at any time be ascertained that any person, who has been assisted by or received support from any town, city or county, has real or personal property, or if any such person shall die, leaving real or personal property, an action may be maintained in any court of competent jurisdiction, by the overseer of the poor of the town or city, or the superintendent of the poor of any county which has furnished or provided such assistance or support, or any part thereof, against such person or his or her estate, to recover such sums of money as may have been expended by their town, city or county in the assistance and support of such person during the period of ten years next preceding such discovery or death.

Poor Law, § 57, added by Laws 1901, chap. 664.

§ 45. **Who may be compelled to support poor relatives.**— The father, mother and children, if of sufficient ability, of a poor person who is insane, blind, old, lame, impotent or decrepit, so as to be unable by work to maintain himself, must, at their own charge,

Order to compel support; court to hear, etc.

relieve and maintain him in a manner to be approved by the overseers of the poor of the town where he is, or in The City of New York, by the commissioners of public charities. If such poor person be insane, he shall be maintained in the manner prescribed by the insanity law. The father, mother, husband, wife or children of a poor insane person legally committed to and confined to an institution supported in whole or in part by the state, shall be liable, if of sufficient ability, for the support and maintenance of such insane person from the time of his reception in such institution.

Code Crim. Pro., § 914, as am'd by chap. 399, Laws 1898.

§ 46. **Order to compel a person to support a poor relative, et cetera.**—If a relative of a poor person fail to relieve and maintain him as provided in the last section, the overseers of the poor of the town where he is, or in The City of New York, the commissioners of public charities may apply to the Court of General Sessions of the county of New York or to the county court of any other county where the person dwells, for an order to compel such relief, upon at least five days' written notice, served personally, or by leaving it at the last place of residence of the person to whom it is directed, in case of his absence, with a person of suitable age and discretion. If such poor person be insane and legally committed to and confined in an institution supported in whole or in part by the state, and his relatives refuse or neglect to pay for his support and maintenance therein, application may be made by the treasurer of such institution in the manner provided in this section for an order directing the relatives liable therefor to make such payment.

Code Crim. Pro., § 915, as am'd by Laws 1898, chap. 399, and 1904. ch. 520.

§ 47. **Court to hear the case and make order of support.**—At the time appointed in the notice, the court or judge thereof must proceed summarily to hear the allegations and proofs of the parties, and must order such of the relatives of the poor person, mentioned in section nine hundred and fourteen, as were served with the notice and are of sufficient ability, to relieve and maintain him, specifying in the order the sum to be paid weekly for his support, and requiring it to be paid by the father, or if there be none, or if he be not of sufficient ability, then by the children, or if there be none, or if they be not of sufficient ability, then by

Support; how apportioned, etc.

the mother. If the application be made to secure an order compelling relatives to pay for the maintenance of insane poor persons committed to, and confined in, an institution supported in whole or in part by the state, such order shall specify the sum to be paid for his maintenance by his relatives liable therefor, from the time of his reception in such institution to the time of making such order, and also the sum to be paid weekly for his future maintenance in such institution. The relatives served with such notice shall be deemed to be of sufficient ability, unless the contrary shall affirmatively appear to the satisfaction of the court or a judge thereof.

Code Crim Pro., § 916, as am'd by Laws 1898, chap. 399.

§ 48. **Support; when to be apportioned among different relatives.**—If it appear that any such relative is unable to wholly maintain the poor person or to pay for his maintenance if confined in a state institution for the insane, but is able to contribute toward his support, the court or a judge thereof may direct two or more relatives, of different degrees, to maintain him or to pay for his maintenance in such an institution if insane, prescribing the proportion which each must contribute for that purpose; and if it appear that the relatives are not of sufficient ability wholly to maintain him, or to pay for his maintenance in such an institution, if insane, but are able to contribute something, the court or a judge thereof must direct the sum, in proportion to their ability, which they shall pay weekly for that purpose. If it appears that the relatives who are liable for the maintenance of an insane poor person confined in a state institution for the insane are not able to pay the whole amount due for such maintenance from the time of such poor person's admission to such institution, the court or a judge thereof must direct the sum to be paid for such maintenance in proportion to the ability of the relatives liable therefor.

Code Crim. Pro., § 917, as am'd by chap. 399, Laws 1898.

§ 49. **Order to prescribe time during which support is to continue, or may be indefinite; when and how order may be varied.**—The order may specify the time during which the relatives must maintain the poor person, or during which any of the sums directed by the court or a judge thereof are to be paid, or it may be indefinite or until the further order of the court or a judge thereof. If

Costs; failure to comply with order, etc.

the order be for payment of a weekly sum for the maintenance of an insane poor person in a state institution, the order shall specify that such sum shall be paid as long as such insane poor person is maintained in such institution. The court or a judge thereof may, from time to time, vary the order, as circumstances may require, on the application either of any relative affected by it, or of an officer on whose application the order was made, upon ten days' written notice.

Code Crim. Pro., § 918, as am'd by chap. 399, Laws 1898.

§ 50. **Costs, by whom to be paid, and how enforced.**—The costs and expenses of the application must be ascertained by the court, and paid by the relatives against whom the order is made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by attachment.

Code Crim. Pro., § 919.

§ 51. **Action on the order on failure to comply therewith.**—If a relative, required by an order of the court or a judge thereof, to relieve or maintain a poor person, neglect to do so in the manner approved by the officers mentioned in section nine hundred and fourteen, and neglect to pay them weekly the sum prescribed by the court or a judge thereof, the officers may maintain an action against the relative, and recover therein the sum prescribed by the court or a judge thereof for every week the order has been disobeyed, to the time of the recovery, with costs, for the use of the poor. If the order directs a relative to pay for the maintenance of an insane poor person in a state institution, and such relative refuses or neglects to pay the amount specified therein, an action may be brought by the treasurer of such institution in its corporate name to recover the amount due to such institution by virtue of such order.

Code Crim. Pro., § 920, as am'd by chap. 399, Laws 1898.

§ 52. **How to proceed against parents, etc.**—When the father, or the mother being a widow or living separate from her husband, absconds from the children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the public, the officers mentioned in section nine hundred and fourteen may apply to any two justices of the peace or police justices in the county in which any real or personal property of the

Seizure of property; warrant, etc.

father, mother or husband is situated, for a warrant to seize the same. Upon due proof of the facts, the magistrate must issue his warrant, authorizing the officers so applying to take and seize the property of the person so absconding. Whenever any child shall be committed to an institution pursuant to any provision of law, any criminal court or magistrate may issue a warrant for the arrest of the father of the child, and examine into his ability to maintain such child in whole or in part; and if satisfied that such father is able to contribute toward the support of the child, then such court or magistrate shall, by order, require the weekly payment by such father of such sum and in such manner as shall be in said order directed, towards the maintenance of such child in such institution, which amount when paid shall be credited by the institution to the city, town or county against any sums due to it therefrom on account of the maintenance of the child.

Code Crim. Proc., § 921, as am'd by Laws 1903, chap. 13.

§ 53. **Seizure of their property — Transfer thereof, when void.**—The officers so applying may seize and take the property, wherever it may be found in the same county; and are vested with all the rights and title thereto which the person absconding then had. The sale or transfer of any personal property, left in the county from which he absconded, made after the issuing of the warrant, whether in payment of an antecedent debt or for a new consideration, is absolutely void. The officers must immediately make an inventory of the property seized by them, and return it, together with their proceedings, to the next county court of the county where they reside, there to be filed.

Code Crim. Proc., § 922, as am'd by Laws 1895, chap. 880.

§ 54. **Warrant and seizure, when confirmed or discharged, etc.**—The court, upon inquiring into the circumstances of the case, may confirm or discharge the warrant and seizure; and if it be confirmed, must, from time to time, direct what part of the personal property must be sold, and how much of the proceeds of the sale, and of the rents and profits of the real property, if any, are to be applied toward the maintenance of the children or wife of the person absconding.

Code Crim. Proc., § 923.

§ 55. **Warrant, in what cases to be discharged.**—If the party against whom the warrant issued, return and support the wife

Sale of property seized, etc.

or children so abandoned, or give security satisfactory to any two justices of the peace, or police justices in the city, village or town, to the overseers of the poor of the town, or in the city of New York, to the commissioners of charities and corrections, that the wife or children so abandoned shall not be chargeable to the town or county, then the warrant must be discharged by an order of the magistrates, and the property taken by virtue thereof restored to the party.

Code Crim. Proc., § 924.

§ 56. **Sale of the property seized, and the application of its proceeds.**—The officers must sell at public auction the property ordered to be sold, and receive the rents and profits of the real property of the person absconding, and in those cities, villages or towns which are required to support their own poor, the officers charged therewith must apply the same to the support of the wife or children so abandoned; and for that purpose must draw on the county treasurer, or in the city of New York, upon the comptroller, for the proceeds as directed by special statutes. They must also account to the county court of the county, for all moneys so received by them, and for the application thereof from time to time, and may be compelled by that court to render that account at any time.

Code Crim. Proc., § 925.

CHAPTER TWO

SUPERINTENDENTS OF THE POOR

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| §57. Election and appointment. | §69. Report of State Board of Charities. |
| §58. Undertaking. | §70. Outdoor relief. |
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| §63. Idiots and lunatics. | §75. Convict made goods. |
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§ 57. **Superintendents of the poor.**— There shall continue to be elected or appointed in each of the counties one or more superintendents of the poor as heretofore; but no supervisor of a town, or county treasurer, shall be elected or appointed to such office. The board of supervisors of any county having, or entitled to have, three or more superintendents of the poor, may at an annual meeting thereof, determine by resolution that thereafter only one county superintendent of the poor shall be elected; but no superintendent of the poor shall be elected or appointed in such county until the general election next preceding the expiration of the terms of the superintendents in office, or the office shall be vacant. The term of any superintendent in office, or of any person duly elected thereto on the passage of such resolution, shall not be affected thereby. Such board may also, in counties having and entitled to have but one superintendent of the poor, in like manner determine that thereafter three superintendents of the poor be elected for such county. After the passage of a resolution, as herein provided, the powers herein conferred shall not be again exercised within a period of five years. Such resolution shall not take effect until the next calendar year succeeding its adoption.

There shall continue,

1. To be elected annually in each of the counties so having and being entitled to three county superintendents, one county superintendent of the poor, who shall hold his office for three years from

Appointment and election.

and including the first day of January succeeding his election, and until his successor is duly elected and qualifies ;

2. To be appointed by the board of supervisors, if in session, otherwise by the county judge, a county superintendent of the poor, when a vacancy shall occur in such office, and the person so appointed shall hold the office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies ;

3. To be elected a county superintendent of the poor in a county when a vacancy shall occur in such office, and the term of which shall not expire on the last day of the next succeeding December, and the person so elected shall hold the office for such unexpired term, which shall be designated upon the ballots of the electors, or until his successor shall be elected and qualifies ;

4. To be elected in each of the counties so having, and entitled to have, but one superintendent, a superintendent of the poor, who shall hold his office for three years from and including the first day of January succeeding his election, and until his successor is duly elected and qualifies ;

5. To be appointed by the board of supervisors, if in session, otherwise by the county judge, a superintendent of the poor, in a county having and being entitled to but one superintendent, when a vacancy shall occur in such office ; and the person so appointed shall hold the office until and including the last day of December succeeding his appointment, and until his successor shall be elected and qualifies ;

6. To be elected in the succeeding year after the board of supervisors of a county having but one superintendent of the poor shall have adopted a resolution to have three superintendents, if the term of the superintendent in office expires with such year, three superintendents of the poor for such county, for the terms of one, two and three years respectively, which terms shall be respectively designated upon the ballots of the electors voting for such officers. If the term of the superintendent in office will not expire with such succeeding year, there shall be elected two superintendents of the poor for such county, for such terms, to be so designated upon the ballots of the electors voting for such officers, as will make the terms of one of the three superintendents expire with each succeeding year, and one superintendent of the poor shall hereafter be annually elected. Such persons so elected shall hold the office from and including the first day of January succeeding his elec-

Undertaking.

tion, and until and including the last day of December of the year in which his term shall so expire, and until his successor is duly elected and qualifies. When ballots are voted without designating the term, the first name on the ballot shall be deemed as intended for the full or longer term of the officer voted for; the second name for the next longer term, and the third name for the shorter term.

County Law, § 210; 1 R. S. 780. See § 523, ante.

A supervisor is ineligible to hold the office of superintendent of the poor, or to an election or appointment thereto.

The People ex rel. Furman v. Clute, 50 N. Y. 451.

The superintendent may contract a liability for supplies furnished for the county poorhouse.

Hayes v. Symonds, 9 Barb. 260.

The majority of superintendents may bind the minority in transacting business officially.

Johnson v. Dodds, 56 N. Y. 76.

The county superintendents of the poor of the several counties are authorized to bind out any child under the age of eighteen years who shall be sent to the poorhouse, or whose support shall be a county charge.

Johnson v. Dodds, 56 N. Y. 76.

§ 58. **Undertaking.**— Every person elected or appointed to the office of superintendent of the poor shall, before he enters upon the duties of his office, and if appointed, within fifteen days after notice thereof, execute and deliver to the clerk of his county, to be filed in his office, his undertaking to the county, with two or more sufficient sureties, with the approval of the board of supervisors, if in session, indorsed thereon by the clerk; otherwise by the county judge of his county, or a justice of the Supreme Court of his judicial district, to the effect that he will faithfully discharge the duties of his office as such superintendent of the poor, and pay according to law all moneys that shall come into his hands as such superintendent, and render a just and true account thereof to the board of supervisors of his county.

County Law, § 211; 1 R. S. 781.

UNDERTAKING OF COUNTY SUPERINTENDENT OF THE POOR.

WHEREAS, ... was duly elected [or, appointed] superintendent of the poor of the county, on the.... day of, 19... now, therefore, we, the said, as principal, and and, as sureties, do hereby undertake, by and with the county of....., that the said will faithfully discharge the duties of his office as such superintendent of the poor, and pay, according to law, all moneys that shall come into his hands as such superin-

Pay; powers and duties.

tendent, and render a just and due account thereof to the board of supervisors of the county of.....

Dated this.....day of....., 19..

The above bond and the sureties named therein were duly approved by the board of supervisors of the county of....., on the day of...., 19..

Clerk of the Board.

§ 59. General powers supervisors as to pay.—The board of supervisors shall:

Fix the salaries and compensation of county treasurers, district attorneys and superintendents of the poor of their county which shall be a county charge and not be changed during the term of any such officer and prescribe the mode of appointment and fix the number, grade and pay of the clerk's assistants and employes in such offices when not otherwise fixed by law which shall be a county charge.

County Law, § 12, subd. 5. See also, §§ 17, 34, ante.

The board of supervisors may appoint one of the superintendents of the poor of their county keeper of the almshouse.

Poor Law, § 4.

§ 60. Powers and duties of superintendents.—The county superintendents of the poor shall:

1. Have the general superintendence and care of poor persons who may be in their respective counties.

2. Provide and keep in repair suitable almshouses when directed by the board of supervisors of their county.

3. Establish rules and by-laws for the government and good order of such almshouses, and for the employment, relief, management and government of the poor therein; but such rules and regulations shall not be valid until approved by the county judge of the county, in writing.

4. Unless a keeper be appointed by the board of supervisors, as provided by section four of this article, employ suitable persons to be keepers of such houses, and physicians, matrons and all other necessary officers and servants, and vest such power in them for the government of such houses, and the poor therein, as shall be necessary, reserving to such poor persons who may be placed under the care of such keepers, matrons, officers or servants, the right of appeal to the superintendents. [Amended by Laws 1903, chap. 340.]

Powers and duties.

5. Purchase all necessary furniture, implements, food and materials for the maintenance of the poor in such houses, and for their employment in labor, and use, sell and dispose of the proceeds of such labor as they shall deem expedient.

6. Prescribe the rate of allowance to be made for bringing poor persons to the county almshouse, subject to such alterations as the board of supervisors may by general resolution make.

7. Authorize the keepers of such houses to certify the amount due for bringing such poor persons; which amount shall be paid by the county treasurer on the production of such certificate, countersigned and allowed by the county superintendent of the poor.

8. Summarily decide any dispute that shall arise concerning the settlement of any poor person, upon a hearing of the parties, and for that purpose may issue subpoenas to compel the attendance of witnesses, with the like powers to enforce such process, as is given to a justice of the peace in an action pending before him; their decisions shall be filed in the office of the county clerk within thirty days after they are made, and shall be conclusive and final upon all parties interested, unless an appeal therefrom shall be taken, as provided in this chapter.

9. Direct the commencement of suits by any overseer of the poor who shall be entitled to prosecute for any penalties, or upon any recognizance, bonds, or securities taken for the indemnity of any town or of the county; and in case of the neglect of any such overseer, to commence and conduct such suits, without the authority of such overseer, in the name of such superintendents.

10. Draw on the county treasurer for all necessary expenses incurred in the discharge of their duties, which draft shall be paid by such treasurer out of the moneys placed in his hands for the support of the poor.

11. Audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for service relating to the support, relief or transportation of the county poor; and draw on the county treasurer for the amount of the accounts which they shall so audit and settle.

12. Furnish necessary relief to such of the county poor as may require only temporary assistance, or are so disabled that they cannot be safely removed to the county almshouse, or to the county poor who can be properly provided for elsewhere than at the

Powers and duties.

county almshouse at an expense not exceeding that of their support at such almshouse.

13. Render to the board of supervisors of their county, at their annual meeting, a verified account of all moneys received and expended by them, or under their direction, and of all their proceedings in such manner and form as may be required by the board.

14. Pay over all moneys remaining in their hands, within fifteen days after the expiration of their terms of office, to the county treasurer, or their successors.

15. Administer oaths and take affidavits in all matters pertaining to their office, and elicit, by examination under oath, statements of facts from applicants for relief. "Expenditures by the superintendent of the poor in the administration of his department are subject to the following limitations: The board of supervisors, at its annual meeting, may fix the maximum sum which may be expended by the superintendent, at his discretion, during the next ensuing year, and may provide that expenditures in excess of that sum shall be made only with the written approval of the chairman of the board of supervisors, or of a committee of the board, composed of not exceeding three members. If such limitation is fixed and such provision made, the county treasurer shall not pay any draft or order of the superintendent in excess of the sum so fixed by the board, unless it is accompanied with the written approval of such chairman or committee."

Poor Law, § 3, as am'd by chap. 507, Laws of 1897.

As to reports to board of supervisors by
See County Law, § 233; 1 R. S. 786.

As to penalty for neglect to so report,
See Penal Code, § 117a.

The superintendent of the poor under the statute authorizing them to settle all accounts of the overseers of the poor, justices and other persons for services relating to the support, relief or transportation of county paupers (Laws 1832, chap. 26) have no authority to audit a claim of an attorney employed by them in bastardy proceedings.

Such officers have power to employ an attorney and are liable for his services, but such services do not relate to "support, relief or transportation" within the meaning of the statute.

It seems that such an expense incurred by them is a county charge to be audited by board of supervisors, and may be charged upon the putative father.

Neary v. Robinson, 98 N. Y. 81.

The board of supervisors of a county has no power to direct the county treasurer not to pay, out of the poor funds, any drafts drawn by the superintendents of the poor to their own order, or to the order of either of them,

Powers and duties.

nor to direct him not to pay any draft, unless the object for which the money is to be paid be specified therein.

People ex rel. Serven v. Demarest, 16 Hun, 123.

They are bound to provide funds to pay orders drawn by the superintendents of the poor and certificates given for service as jurors, and if the funds are wasted or lost, to provide others to replace them.

Chemung Canal Bank v. Board of Supervisors of Chemung County, 5 Denio, 517.

Where a person sells to superintendents of the poor, provisions for the poor-house, upon an agreement that it is to be a cash sale, or if an order shall be given, that it shall answer as cash, whereupon the superintendents give him an order upon the treasurer of the county for the amount, and upon presentment of such order to the treasurer payment is refused, for want of funds, the vendor is remitted to his original right of action, and may recover the value of the supplies.

In such a case the county is liable on the contract made by its authorized agents, in the business specially committed to them by the statute, and its liability is to be enforced in a suit against the superintendent.

Paddock v. Symonds, 11 Barb. 117.

Superintendents of the poor are not bound to audit the accounts of physicians and others for services rendered to county paupers by request of the overseers of the poor of the several towns; and this, though the services were rendered in pursuance of orders for temporary relief.

It is the duty of the overseers to adjust such accounts and charge them in their bills against the county.

The employment of a physician by the superintendents of the poor of a county does not supersede the right of the overseers of the several towns to employ other physicians to attend county paupers, entitled to temporary relief.

Ex parte Green & Brown, 4 Hill, 558.

The statutes relating to the support of the poor at county poorhouses furnish no authority for a discrimination between county and town poor, in respect to the application of the income of the poorhouse farm. On the contrary the legislature intended the income should be applied to the support of the poor of the county generally at the poorhouse without distinction.

The statutory provisions obviously contemplate that the benefits resulting from the poorhouse and farm shall be common to the county and towns, in respect to the support of the poor at the poorhouse, without any regard whatever to the general obligation of each to support its own poor.

The occupancy of the property, the products of the farm consumed thereon and in the poorhouse, the labor of the poor in carrying on the farm and the business of the poorhouse, the avails of sales of products of the farm and the labor of the poor, are all to go, and be applied, to reduce the expenses of the support of the poor generally, at the poorhouse, without any discrimination.

Thus, where the city of Rochester was, by law, in the condition of a town, in respect to the mode of supporting its poor at the county poorhouse, it was held that the income of the poorhouse farm in Monroe county ought to be applied to the support, indiscriminately, of the county, town and city poor, kept at the county poorhouse on said farm.

City of Rochester v. Supervisors of Monroe, 22 Barb. 248.

The overseer of the poor cannot incur for the county a liability beyond the sum of \$10. for relief in a single case, without the consent of one of the superintendents of the poor.

But with this restriction his power of giving temporary relief is independent of the control of the superintendents of the poor.

Gere v. Supervisors of Cayuga, 7 How. 255.

Appointment as keeper; direct overseers to take charge, etc.

Superintendents of the poor are not authorized to receive paupers into the county poorhouse to be supported at the expense of the county, unless an order to that effect has been made by the overseer of the poor, or a warrant has been issued for the removal of the pauper to the county poorhouse as a lunatic.

Pomeroy v. Wells, 8 Paige, 405.

§ 61. **Appointment of superintendent as keeper.**—The board of supervisors of any county may, by resolution, appoint as keeper of its county almshouse one of the superintendents of the poor of such county, who shall hold such office until the expiration of his term as superintendent or until the board of supervisors, by resolution, shall determine that he shall no longer act in such capacity. The board of supervisors may fix the compensation such superintendent shall receive for acting as such keeper, and such compensation shall be a county charge. While a resolution of the board of supervisors directing such superintendent to act as keeper of the county almshouse is in force, the superintendents shall not employ a keeper thereof.

Poor Law, § 4. See § 944, ante.

§ 62. **When they may direct overseers of the poor to take charge of county poor.**—Whenever the county superintendents take charge of the support of any county poor person, in counties where no almshouse is provided, they may authorize the overseers of the poor of the town in which such poor person may be, to continue to support him, on such terms and under such regulations as they shall prescribe; and thereafter no moneys shall be paid to such overseers for the support of such poor person, without the order of the superintendents; or the superintendents may remove such poor person to any other town, and there provide for his support, in such manner as they shall deem expedient.

Poor Law, § 5.

§ 63. **Idiots and lunatics.**—The superintendents of the poor shall provide for the support of poor persons that may be idiots or lunatics, at other places than in the almshouse, in such manner as shall be provided by law for the care, support and maintenance of such poor persons.

Poor Law, § 6.

A person is now committed upon the certificate of two medical examiners approved by a judge of a court of record. The alleged insane person may be confined upon the certificate of lunacy for five days preceding the approval of the judge. The judge may in his discretion take proof as to any alleged lunacy before approving the certificate or he may call a jury to determine

Pestilence in almshouse, accounts of county treasurer.

the question. Application is to be made to the court of record by verified petition stating the facts upon which the allegation of insanity is based and is to be accompanied by the certificate in lunacy of two medical examiners. Provision is also made for the service of notice of the application upon the alleged insane person and his relatives. Upon the petition and certificate the judge may issue his order of commitment. If a relative or friend of the alleged insane person demands a hearing and a trial of the issues, or if the judge deems a trial necessary for complete justice, he must issue an order directing a hearing before him or a referee appointed by him at which all the parties interested may be present and testify as to the condition of the alleged insane person. It is not intended by this change to provide a trial of the issue in every case of alleged insanity.

In a majority of the cases the insanity of the person is clearly apparent and there is no occasion for an extended hearing. In such cases it is for the material advantage of all parties interested that the person be confined in an institution for the custody and treatment of the insane. There may be cases, however, where the insanity of the person may be in doubt or where the applicant for an order of commitment is pecuniarily or otherwise interested in securing the confinement of the alleged lunatic.

These cases should be carefully scrutinized and every opportunity to be given to the alleged lunatic or to other persons interested in his welfare to be heard if they so desire.

The provision that the judge issuing the order of commitment of the insane person to the state hospital shall make a statement in writing to accompany the order of the financial condition of the person committed is new. It is presumed that the judge will ascertain such condition and the information acquired will be of use to the hospital authorities and the commission in lunacy in securing from the estate of the person committed or his relatives legally liable for his support compensation for his maintenance at the hospital.

Revisers Notes to § 62, Insanity Law.

§ 64. **Pestilence in almshouse.**—Whenever any pestilence of infectious or contagious disease shall exist in any county almshouse or in its vicinity, and the physician thereof shall certify that such pestilence or disease is likely to endanger the health of the persons supported thereat, the superintendents of the poor of such county shall cause the persons supported at such almshouse or any of them, to be removed to such other suitable place in the same county as shall be designated by the board of health of the city, town or village within which such almshouse shall be, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance, until they can be safely returned to the county almshouse from which they were taken, or otherwise discharged.

Poor Law, § 7.

§ 65. **Accounts of county treasurer with towns.**—In counties where there are town poor, the county treasurer thereof shall open and keep an account with each town, in which the town shall be credited with all the moneys received from the same, or from its

Town expenses, levy, etc.

officers, and shall be charged with the moneys paid for the support of its poor. If there be a county almshouse in such county, the superintendents of the poor shall, in each year, before the annual meeting of the board of supervisors, furnish to the county treasurer a statement of the sums charged by them as herein directed, to the several towns for the support of their poor, which shall be charged to such towns, respectively, by the county treasurer in his account.

Poor Law, § 8.

In counties where the towns are directed to support their own poor the county treasurer should credit each town with the money received from the same and charge it with moneys paid out for the support of the poor chargeable to such town.

All benefits and avails from the poorhouse farm are to go into a common fund for benefit of all the towns, etc.

Rochester v. Supr. of Monroe, 22 Barb. 248.

§ 66. **Annual apportionment of town expenses.**—In counties having an almshouse, and where there are town poor, the superintendents shall annually, and during the week preceding the annual meeting of the board of supervisors, make out a statement of all the expenses incurred by them the preceding year for the support of town poor, and of the moneys received therefor, exhibiting the deficiency, if any, in the funds provided for defraying such expenses, and they shall apportion the deficiency among the several towns in proportion to the number and expenses of the town poor of such towns respectively, who shall have been provided for by the superintendents, and shall charge the towns with such proportion; which statement shall be by them delivered to the county treasurer.

Poor Law, § 9. See Rochester v. Supr. of Monroe, 22 Barb. 248.

§ 67. **Tax levy on towns.**—At the annual meeting of the board of supervisors, the county treasurer shall lay before them the account kept by him; and if it shall appear that there is a balance against any town, the board shall add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such sum for interest as will reimburse and satisfy any advances that may be made, or that may have been made, by the county treasurer for such town, which moneys, when collected, shall be paid to the county treasurer.

Poor Law, § 10; 2 R. S. 2297.

Expense of county poor, report to state board of charities.

When there is a balance against any town then the board of supervisors shall add the same to the amount of taxes to be levied and collected upon that town.

Rochester v. Supr. of Monroe, 22 Barb. 248.

§ 68. **Expense of county poor.**—The superintendents of the poor shall annually present to the board of supervisors, at their annual meeting, an estimate of the sum which, in their opinion, will be necessary during the ensuing year for the support of the county poor; and such board of supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as other contingent expenses of the county, to be paid to the county treasurer and to be by him kept as a separate fund, distinct from the other funds of the county.

Poor Law, § 11.

This section is in accordance with the decision of
Rochester v. Supr. of Monroe, 22 Barb. 248.

The fund raised under the section is regarded as a distinct fund, separate from any personal or corporate liability of the superintendent. It is called the poorhouse fund.

Hayes v. Symonds, 9 Barb. 260.

§ 69. **Superintendent's report to the State board of charities.**—The superintendents of the poor of every county shall, on or before the first day of December in each year, make reports covering the year ending September thirtieth, to the State board of charities in such form as the board shall direct, showing the number of the town poor and of the county poor that have been relieved or supported in their county the year preceding October first; the whole expense of such support, the amount paid for transportation of poor persons, and any other items not part of the actual expenses of maintaining the poor, and the allowance made to the superintendents, overseers, justices, keepers, matrons, officers and other employes of the superintendents; the actual value of the labor of the poor persons maintained, and the estimated amount saved in the expense of their support in consequence of their labor; the sex and native country of every such poor person, with the causes, either direct or indirect, which have operated to render such persons poor, so far as the same can be ascertained; and shall include in such report a statement of the name and age of, and of the names and residence of the parents of, every poor child who has been placed by them in a family during the year, with the name

Temporary relief; penalty for false report.

and residence of the family with whom every such child was placed, and the occupation of the head of the family, together with such other items of information in respect to their character and condition as the state board of charities shall direct.

Poor Law, § 12.

§ 70. **Supervisors and members of town boards may direct as to temporary or outdoor relief to the poor.**—The board of supervisors of any county may make such rules and regulations as it may deem proper in regard to the manner of furnishing temporary or outdoor relief to the poor in the several towns in said county, and provided the board of supervisors shall have failed to make any such rules and regulations the town board of any town may make such rules and regulations as it may deem proper in regard to furnishing temporary or outdoor relief to the poor in their respective towns, by the overseer or overseers of the poor thereof, and also in regard to the amount such overseer or overseers of the poor may expend for the relief of each person or family, and after the board of supervisors of any county, or the town board of any town, shall have made such rules and regulations, it shall not be necessary for the overseers of the poor of the towns in said county, where such rules and regulations were made by the board of supervisors, or if in a town by the said town board, to procure an order from the supervisor of the town, or the sanction of the superintendent of the poor to expend money for the relief of any person or family, unless the board of supervisors of such county or the town board of such town shall so direct; but this section shall not apply to the counties of New York and Kings.

Poor Law, § 13, as am'd by chap. 48, Laws of 1897.

§ 71. **Penalty for neglect or false report.**—Any superintendent of the poor or other officer or person having been an officer, who shall neglect or refuse to render any account, statement or report required by this chapter, or shall willfully make any false report, or shall neglect to pay over any moneys within the time required by law, shall forfeit two hundred dollars to the town or county of which he is or was an officer, and shall be liable to an action for all moneys which shall be in his hands after the time the same should have been paid over, with interest thereon at the rate of ten per centum per annum from the time the same should have been paid over. The State board of charities shall

· Powers, neglect of duty, unlawful removal.

give notice to the district attorney of the county of every neglect to make the report required to be made to that board, and every officer or board to whom any such account, statement, report or payment should have been made, shall give notice to such district attorney of every neglect or failure to make the same; and such district attorney shall, on receiving such notice or in any way receiving satisfactory evidence of such default, prosecute for the recovery of such penalties or moneys in the name of the town or county entitled thereto, and the sum recovered, if for the benefit of the town, shall be paid to the overseer of the poor thereof, and if for the benefit of the county, shall be paid into the county treasury, to be expended by the overseer or superintendent of the poor for the support of the poor of such town or county.

Poor Law, § 14.

§ 72. **Powers of superintendents of poor.**—In those counties where all the poor are a charge upon the county, the superintendents of the poor are vested with the same powers, as are given by this title to the overseers of the poor of a town, in respect to compelling relatives to maintain poor persons, and in respect to the seizure of the property of a parent absconding and abandoning his family; and are entitled to the same remedies in their names, and must perform the duties required by this title, of overseers, and are subject to the same obligations and control.

Code Crim. Proc., § 926.

§ 73. **Neglect of duty by superintendent or overseer of the poor.**—The county superintendents of the poor, or any overseer of the poor, whose duty it shall be to provide for the support of any bastard and the sustenance of its mother, who shall neglect to perform such duty, shall be guilty of a misdemeanor, and shall, on conviction, be liable to a fine of two hundred and fifty dollars, or to imprisonment not exceeding one year, or by both such fine and imprisonment.

Penal Code, § 117b.

§ 74. **Unlawful removal of poor person.**—Any person who shall send, remove, or entice to remove, bring, or cause to be sent, removed or brought, any poor or indigent person from any city, town or county, to any other city, town or county without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or

Convict-made goods; prisoners employed.

county from which he is so sent, removed, or brought or enticed to remove, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned not exceeding six months, or fined not exceeding one hundred dollars, or both.

Penal Code, § 675a.

§ 75. **Convict-made goods.**—The said commission shall have the further duty and authority to require the proper officials of the State and the political divisions thereof, and of all public institutions of the State, and political divisions thereof, supported wholly or in part by the State, or any political division thereof, to furnish to said commission, annually, estimates for each ensuing year of the amount of labor to be required by each, and of the articles which may be manufactured in penal institutions, required to be purchased for the use of the State or the political divisions or said institutions in their charge or under their management.

Laws 1895, chap. 1026, § 7a, as added by chap. 430, Laws 1896.

§ 76. **Limitation of number of prisoners to be employed.**—The superintendent of State prisons, and the superintendents of reformatories and penitentiaries, respectively, are authorized and directed to cause to be manufactured by the convicts in the prisons, reformatories and penitentiaries, such articles as are needed and used therein, and also such as are required by the State or political divisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the State, including articles and materials to be used in the erection of the buildings. All such articles manufactured in the State prisons, reformatories and penitentiaries, and not required for use therein, may be furnished to the State, or to any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political divisions thereof, and of the institutions of the State, or and determined as hereinafter provided, upon the requisitions of the proper officials, trustees or managers thereof. No articles so manufactured shall be purchased from any other source, for the State or public institutions of the State, or the political divisions thereof, unless said State commission of prisons shall certify that the same cannot be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate.

Laws 1847, chap. 460, § 105, as am'd by Laws 1889, chap. 382, Laws 1896, chap. 429.

Prisoners to manufacture certain articles, etc.

§ 77. **Prisoners to manufacture certain articles.**—On or before October first in each year, the proper officials of the State, and the political divisions thereof, and of the institutions of the State, or political divisions thereof, shall report to the said commission of prisons estimates for the ensuing year of the amount of supplies of different kinds required to be purchased by them that can be furnished by the penal institutions in the State. The said commission is authorized to make regulations for said reports, to provide for the manner in which requisitions shall be made for supplies, and to provide for the proper diversification of the industries in said penal institutions.

Laws 1847, chap. 460, § 106, as am'd by Laws 1889, chap. 382, Laws 1896, chap. 429.

§ 78. **Price of same, how determined.**—The comptroller, the State commission of prisons and the superintendent of State prisons and the lunacy commission are hereby constituted a board to be known as the board of classification. Said board shall fix and determine the prices at which all labor performed, and all articles manufactured and furnished to the State, or the political divisions thereof, or to the public institutions thereof, shall be furnished, which prices shall be uniform to all, except that the prices for goods or labor furnished by the penitentiaries to or for the county in which they are located, or the political divisions thereof, shall be fixed by the board of supervisors of such counties, except New York and Kings counties, in which the prices shall be fixed by the commissioners of charities and correction, respectively. The prices shall be as near the usual market price for such labor and supplies as possible. The State commission of prisons shall devise and furnish to all such institutions a proper form for such requisition and the comptroller shall devise and furnish a proper system of accounts to be kept for all such transactions. It shall also be the duty of the board of classification to classify the buildings, offices and institutions owned or managed and controlled by the State, and it shall fix and determine the styles, patterns, designs and qualities of the articles to be manufactured for such buildings, offices and public institutions in the penal institutions in this State. So far as practicable, all supplies used in such buildings, offices and public institutions shall be uniform for each class, and of the styles, patterns, designs and qualities that can be manufactured in the penal institutions in this State.

Laws 1847, chap. 460, § 107, as am'd by Laws 1889, chap. 382; Laws of 1897, chap. 623.

Fines, contract labor prohibited.

§ 79. **Fines upon prisoners.**—All moneys received for fines imposed under this act by the superintendents of penitentiaries, shall be credited to a general fund and be disbursed by direction of the board of supervisors of the counties in which they are located except that in New York and Kings counties, they are disbursed by direction of the commissioners of charities and corrections.

Laws 1847, chap. 460, § 109, as am'd by Laws 1889, chap. 382; Laws 1896, chap. 429.

§ 80. **Contracts for prisoners' labor prohibited.**—The superintendent of State prisons shall not, nor shall any other authority whatsoever, make any contract by which the labor or time of any prisoner in any State prison, reformatory, penitentiary or jail in this State, or the product or profit of his work, shall be contracted, let, farmed out, given or sold to any person, firm, association or corporation; except that the convicts in said penal institutions may work for, and the products of their labor may be disposed of, to the State or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

Laws 1847, chap. 460, § 97, as am'd by Laws 1889, chap. 382; Laws 1896, chap. 429.

CHAPTER THREE

STATE POOR

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§ 81. **Who are State poor, and how relieved.**—Any poor person who shall not have resided sixty days in any county in this State within one year preceding the time of an application by him for aid to any superintendent or overseer of the poor, or other officer charged with the support and relief of poor persons, shall be deemed to be a State poor person, and shall be maintained as in this article provided. The State board of charities shall, from time to time, on behalf of the State, contract for such time, and on such terms as it may deem proper, with the authorities of not more than fifteen counties or cities of this State, for the reception and support, in the almshouses of such counties or cities respectively, of such poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, employment, treatment and care of such poor persons, and for their discharge. Every such contract shall be in writing and filed in the office of such board. Such almshouses, while used for the purposes of this article, shall be appropriately designated by such board and known as State almshouses. Such board may, from time to time, direct the transfer of any such poor person from one almshouse to another and may give notice from time to time to counties, to which almshouses they shall send poor persons.

Poor Law, § 90.

§ 82. **Notice to be given to county clerks of location of State almshouses.**—Such board shall give notice to the county clerks of the several counties of the location of each of such almshouses, who thereupon shall cause such notice to be duly promulgated to the superintendents and overseers of the poor, and other officers

Conveyed to state almshouses, punishment for leaving.

charged with the support and relief of poor persons in their respective counties. A circular from the superintendent of State and alien poor appointed by such board shall accompany such notice, giving all necessary information respecting the commitment, support and care of the State poor in such almshouses, according to the provisions of this article.

Poor Law, § 91.

§ 83. **State poor to be conveyed to State almshouses.**—County superintendents of the poor, or officers exercising like powers, on satisfactory proof being made that the person so applying for relief as a State poor person, as defined by this chapter, is such poor person, shall, by a warrant issued to any proper person or officer, cause such person, if not a child under sixteen years of age, to be conveyed to the nearest State almshouse, where he shall be maintained until duly discharged, but a child under two years of age may be sent with its mother, who is a State poor person, to such State almshouse, but not longer than until it is two years of age. All testimony taken in any such proceeding shall be forwarded, within five days thereafter, to the superintendent of State and alien poor, and a verified statement of the expenses incurred by the person in making such removal, shall be sent to such superintendent. Such board shall examine and audit the same, and allow the whole, or such parts thereof as have been actually and necessarily incurred; provided that no allowance shall be made to any person for his time or service in making such removal. All such accounts for expense, when so audited and allowed, shall be paid by the State treasurer, on the warrant of the comptroller to the person incurring the same.

Poor Law, § 92.

§ 84. **Punishment for leaving almshouse.**—An inmate of a State almshouse, who shall leave the same without being duly discharged, and within one year thereafter is found in any city or town of this State soliciting public or private aid, shall be punished by confinement in the county jail of the county in which he is so found, or in any workhouse of this State in such county, for a term not exceeding three months, by any court of competent jurisdiction; and it shall be the duty of every superintendent and overseer of the poor and other officers charged with the support and relief of poor persons, to cause, as far as may be, the provisions of this section to be enforced.

Poor Law, § 93.

Expense, Indian poor, etc.

§ 85. **Expenses for support.**—The expenses for the support, treatment and care of all poor persons who shall be sent as State poor to such almshouses, shall be paid quarterly, on the first day of January, April, July and October in each year, to the treasurer of the county, or proper officers incurring the same, by the treasurer of the State, on the warrant of the comptroller; but no such expenses shall be paid to any county or city, until an account of the number of persons thus supported, and the time that each shall have been respectively maintained, shall have been rendered in due form and approved by the State board of charities.

Poor Law, § 94.

§ 86. **Indian poor persons — Removal to county almshouses.**—Every Indian residing within this State or upon any of the Indian reservations of this State, who is a poor person within the meaning of this chapter, shall be maintained as provided in this article. Upon application being made by such Indian poor person to the superintendent of the poor of the county where such Indian resides, or to any other officer charged with the support and relief of the poor, and on satisfactory proof being made that such Indian is a poor person as defined in this chapter, such superintendent or other officer shall, by warrant, cause such Indian to be conveyed to the almshouse of the county where such Indian resides, where he shall be maintained at State expense. Immediately upon the removal of such Indian who is a poor person to such almshouse, all testimony taken and all facts relating thereto, together with a verified statement of the expenses incurred in making such removal, shall be transmitted to the State board of charities. Such board shall examine all matters relating thereto, and if satisfied that such removal was proper, and that the expenses thereof were actually and necessarily incurred, shall audit and allow the amount of such expenses, which when so audited and allowed shall be paid by the State treasurer, on the warrant of the comptroller, to the person incurring the same.

If, however, it shall appear to the satisfaction of such superintendent that the Indian poor person making application for relief is in such physical condition as to make it improper to remove him to the almshouse, the superintendent may, subject to such rules and regulations as may be prescribed by the State board

Support of Indian poor.

of charities, provide for the care and support of such Indian poor person, without removing him to the almshouse, and the expenses incurred in such care and support shall be paid by the State treasurer on the warrant of the comptroller, upon the order and allowance thereof by the State board of charities as in cases of support of Indian poor persons in almshouses.

Poor Law, § 101.

§ 87. **Contracts for support of Indian poor persons.**—The State board of charities shall from time to time, on behalf of the State, contract with the proper officers of the county within which such Indians who are poor persons reside, on such terms and for such times as it may deem proper, for the reception and support in the almshouse of such counties of such Indians who are poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, treatment and care of such Indians and provide for their discharge. Every such contract shall be in writing and filed in the office of such board.

Poor Law, § 102.

§ 88. **Expenses for support of Indian poor persons.**—The expenses for the support, treatment and care of all Indians who are poor persons and shall be sent to such county almshouse pursuant to this chapter, shall be paid quarterly on the first day of January, April, July and October in each year, to the treasurer of the county wherein such Indians are supported by the State treasurer, on the warrant of the comptroller, but no such expenses shall be paid until an account of the number of Indians thus supported, and the time that each shall have been respectively maintained shall have been rendered in due form and approved by the State board of charities.

Poor Law, § 103.

§ 89. **Duty of keepers — Superintendent of State and alien poor to keep record.**—The keeper or principal officer in charge of such almshouse shall enter the names of all Indians committed thereto, with such particulars in relation thereto as the State board of charities may prescribe. Immediately upon the admission of any such Indian, such keeper or principal officer shall transmit by mail the names of such Indians, with the particulars hereinbefore mentioned, to the superintendent of State and alien poor; and notice of the death, discharge or absconding of any

Investigations by board.

such Indian shall in like manner be transmitted to such superintendent. Such superintendent shall cause the names of such Indians in such county almshouse to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in the almshouse by personal examination of such Indians or in such other manner as the board may direct; and he shall furnish the board in tabulated statements, annually on or before the second Tuesday in January, the number of Indians maintained in all such county almshouses during the preceding year, the number discharged, bound out, removed from the State, and the number who died or left without permission during the year, with such other information as the board may require.

Poor Law, § 104.

§ 90. **Investigations by board or committee — Orders thereon.** —The board may, by order, direct an investigation by a committee of one or more of its members, of the officers and managers of any almshouse, or of the conduct of its officers and employes; and the commissioner or commissioners so designated to make such investigation may issue compulsory process for the attendance of witnesses and the production of books and papers, administer oaths, examine persons under oath, and exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

If it shall appear, after such investigation, that the inmates of the almshouse are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care and supervision, or other condition necessary to their comfort and well being, such board may issue an order in the name of the people, and under its official seal, directed to the proper officer of such almshouse, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. Before such order is issued it must be approved by a justice of the supreme court, after such notice as he may prescribe, and an opportunity to be heard thereon, and any person to whom such an order is directed who shall willfully refuse to obey the same shall, upon conviction, be deemed guilty of a misdemeanor.

Poor Law, § 117.

Almshouse construction, etc.

§ 91a. **Almshouse construction and administration.**— No almshouse shall be built or constructed, in whole or in part, except on plans and designs approved in writing by the State board of charities. It shall be the duty of such board to call the attention, in writing or otherwise, of the board of supervisors and the superintendent of the poor, or other proper officer, in any county, of any abuses, defects or evils, which, on inspection, it may find in the almshouse of such county, or in the administration thereof, and such county officer shall take proper action thereon, with a view to proper remedies, in accordance with the advice of such board.

Poor Law, § 118.

§ 91b. **Shelter for unprotected girls.**— The law authorized the commitment of girls by the magistrate in the districts named to an institution organized for the care for and maintenance of unprotected girls.

Laws 1881, chap. 278, § 1.

§ 91c. **Expense thereat.**— Each board of supervisors of the several counties within the fifth, sixth, seventh and eighth judicial districts of this State, is hereby authorized and directed to audit the bills for boarding any inmate of said institution received therein, from the county of such board, by virtue of any of the provisions of section one of this act, at such prices as such board of supervisors may deem just and reasonable, and the bills so audited shall be paid by the county treasurer of such county. When any such bill is so audited and paid, it shall be apportioned by said board among the various cities and towns in such county as such board shall deem equitable, and the amount so apportioned to any city or town shall be reimbursed by such city or town to such county.

Laws 1881, chap. 278, § 8, as am'd by chap. 53, Laws of 1893.

§ 91d. **Epileptics — Designation and admission of patients.**— There shall be received and gratuitously supported in the colony, epileptics residing in the State, who, if of age, are unable, or, if under age, whose parents or guardians are unable to provide for their support therein; and who shall be designated as State patients. Such additional number of epileptics as can be conveniently accommodated shall be received into the colony by the managers on such terms as shall be just, and shall be designated as pri-

Epileptics.

vate patients. Epileptic children shall be received into the colony only upon the written request of the persons desiring to send them, stating the name, age, place of nativity, if known, the town, city or county in which such children respectively reside, and the ability of their respective parents, or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement in all cases of State patients must be verified by the affidavits of the petitioners and of two disinterested persons, and accompanied by the opinion of a qualified physician, all residents of the same county with the epileptic patient, and acquainted with the facts and circumstances or surrogate of the county; and such judge or surrogate must also stated, and who must be certified to be credible by the county judge certify, in each case, that such State patient, in his opinion, is an eligible and proper candidate for admission to the colony. State patients may also be received into the colony upon the official application of a county superintendent of the poor, or of the poor authorities of any city. It shall be the duty of the superintendent of the poor in every county and of the poor authorities of every city to furnish annually to the State board of charities, a list of all epileptics in their respective jurisdictions, so far as the same can be ascertained, with such particulars as to the condition of each epileptic as shall be prescribed by the said State board. Whenever an epileptic shall become a charge for his or her maintenance on any of the towns, cities or counties of this State, it shall be the duty of all poor authorities of such city, and of the county, to place such epileptic in the said colony. Any parent, guardian or friend of an epileptic child within this State may make application to the poor authorities of any city, or the superintendent of the poor of any county, or the board of supervisors or any supervisor of any town, ward or city where such child resides, showing by satisfactory affidavit or other proof that the health, morals, comfort or welfare of such child may be endangered or not properly cared for if not placed in such colony; and thereupon it shall be the duty of such officer or board to whom such application may be made to place such child in said colony. The board of supervisors shall provide for the support of such patients, except those properly supported by the State, and may recover for the same from the parents or guardians of such chil-

State charitable institutions; report.

āren. In the admission of patients preference shall always be given to poor or indigent epileptics, or the epileptic children of poor or indigent persons, over all others; and preference shall always be given to such as are able to support themselves only in part, or who have parents able to support them only in part, over those who are able or who have parents who are able wholly to furnish such support.

State Charities Law, § 109; 3 R. S. 2847.

§ 91e. **State charitable institutions.**—The term State charitable institutions, when used in this chapter, shall include all institutions of a charitable, eleemosynary, correctional or reformatory character, supported in whole or in part by the State, except institutions for the instruction of the deaf and dumb and the blind, and such institutions which, by section eleven, article eight of the Constitution, are made subject to the visitation and inspection of the commission in lunacy or the prison commission, whether managed or controlled by the State or by private corporations, societies or associations.

State Charities Law, § 2.

§ 91f. **Definition.**—Each of the asylums, reformatories, homes, retreats, penitentiaries, jails, or other institution of this State, in which the board, instruction, care or clothing of persons committed thereto is, or shall be a charge against any county of this State, or town therein, shall be known for the purposes of this act as one of the State benevolent institutions of the State.

Laws of 1880, chap. 347, § 1.

§ 91g. **Report of persons making commitment.**—It shall be the duty of every judge, justice, superintendent of the poor, overseer of the poor, supervisor, or other person, who by law is authorized to make commitments or appointments to any of the State benevolent institutions of the State, to make a report in writing to the clerk of the board of supervisors of the county so liable, or of the county in which any town is so liable for the board, instruction, care, or clothing mentioned in section one of this act; said report shall be made within ten days after making such commitment or appointment, and shall show, when known, the nationality, age, sex, and residence of each person so appointed or committed, and the length of time of such appointment or commitment.

Laws 1880, chap. 347, § 2.

Report of keeper of state charitable institution.

§ 91h. **Same, of keeper, etc.**— It shall be the duty of the keeper, superintendent, warden, secretary, director, or other proper officer of each of the State benevolent institutions of the State, within ten days after receiving any person into any of the institutions mentioned in section one of this act, whose board, care, instruction, tuition, or clothing shall be chargeable to any town or county, to make a report in writing to the clerk of the board of supervisors of the county so liable, or of which any town is so liable. Such report shall show when such persons were received into said institution and when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making such commitment or appointment and the sum chargeable per week, month or year for such person.

Laws 1880, chap. 347, § 3.

§ 91i. **Same, in case of death, etc.**— In case of the death, removal or discharge of any person committed or appointed to any of the institutions mentioned in this act it shall be the duty of the officers mentioned in section three of this act, to immediately report to the clerk of the board of supervisors of the respective county the date of such death, removal or discharge.

Laws 1880, chap. 347, § 4.

§ 91j. **Keeper, etc., to present annual account and report.**— It shall be the duty of the officers mentioned in section three of this act, annually, on or before the fifth day of October, to present to the clerk of the board of supervisors of the county liable for the board, instruction, care or clothing mentioned in this act, or of the county in which any town is so liable, a sworn statement of the account of such institution, with such county or town, up to the first day of said October, and in case of a claim for clothing, an itemized statement of the same, and in case any part of the board, care, tuition, or clothing has been paid by any person or persons, the account will show what sum has been so paid, and accompanying such account shall be a report showing the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the commitment or appointment, the date and length of commitment or appointment, the time to which the account has been paid, and the amount claimed to the first day of said October, the sum per week or per annum charged,

Neglect to make report, etc., powers of board.

and if no part of such account has been paid by any person or persons, the report shall show such fact, duly verified.

Laws 1880, chap. 347, § 5.

§ 91k. **Neglect to make same.**— Any officer mentioned in this act, who shall refuse or neglect to make the reports required by this act shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town or county to which he is required to make such report.

Laws 1880, chap. 347, § 6.

§ 91l. **Filing and presenting same to supervisors.**— The clerk of the board of supervisors who shall receive any report or account in pursuance of the provisions of this act shall carefully file the same and present the same to the respective boards of supervisors on the second day of the annual meeting of the board next succeeding the receipt of the same.

Laws 1880, chap. 347, § 7; 3 R. S. 2828.

Poor houses of the several counties of the state and Kings county are excepted for this act.

Id., §§ 8, 9.

§ 91m. **General powers and duties of board.**— The State board of charities shall visit, inspect and maintain a general supervision of all institutions, societies or associations which are of a charitable, eleemosynary, correctional or reformatory character, whether State or municipal, incorporated or not incorporated, which are made subject to its supervision by the constitution or by law; and shall,

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions aforesaid.

4. Approve or disapprove the organization and incorporation of all institutions of a charitable, eleemosynary, correctional or reformatory character which are or shall be subject to the supervision and inspection of the board.

5. Investigate the management of all institutions made subject to the supervision of the board, and the conduct and efficiency of the officers or persons charged with their management, and the care

Support of inmates of institutions.

and relief of the inmates of such institution therein or in transit.

6. Aid in securing the best sanitary condition of the buildings and grounds of all such institutions, and advise measures for the protection and preservation of the health of the inmates.

7. Aid in securing the establishment and maintenance of such industrial, educational and moral training in institutions having the care of children as is best suited to the needs of the inmates.

8. Establish rules for the reception and retention of inmates of all institutions which, by section fourteen of article eight of the constitution, are subject to its supervision.

9. Investigate the condition of the poor seeking public aid and advise measures for their relief.

State Charities Law, § 9.

10. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

11. Collect statistical information in respect to the property, receipts and expenditures of all institutions, societies and associations subject to its supervision, and the number and condition of the inmates thereof, and of the poor receiving public relief.

A corporation organized under Laws 1875, chap. 130, which takes legal measures to prevent cruelty to children and to enforce the law with regard to them, also feed, cloth and assist them, as well as destitute families, and furnish medical aid, doing the latter work with funds supplied in part by public moneys, is deemed a "charitable" institution, and is subject to visitation by the state board.

People ex rel. State Board v. N. Y. S. P. O. C. C., 25 Misc. 53.

As to the branch of preventing cruelty to children the state board has no jurisdiction.

Id.

§ 910. **Payments for support, etc., of inmates of institutions.**—Boards of estimate and apportionment, common councils, boards of aldermen, boards of supervisors, town boards, boards of trustees of villages, and all other boards or officers of counties, cities, towns and villages, authorized to appropriate and raise money by taxation and make payments therefrom, are hereby authorized in their discretion, to appropriate and to raise money by taxation and to make payments from said moneys, and from any moneys received from any other source and properly applicable thereto, to charitable, eleemosynary, correctional and reformatory institutions wholly or partly under private control, for the care, support and maintenance of their inmates, of the moneys which are or

Reports.

may be appropriated therefor; such payments to be made only for such inmates as are received and retained therein pursuant to rules established by the state board of charities; except that boards of trustees of villages and town boards of towns in which there is no hospital located, and which are situated upon and adjoin the boundary line of a neighboring state, are hereby authorized in their discretion to appropriate and to raise money by taxation and to make payments from said moneys, and from any moneys received from any other source and properly applicable thereto, to hospitals in such adjoining state for the purpose of maintaining a bed or beds in such hospital for the benefit of and to be used exclusively by the inhabitants of such village or town. Boards of trustees of villages and town boards of towns situate upon the boundary line of a neighboring state, which have appropriated and raised money by taxation for the purpose of maintaining a bed or beds in a hospital in such adjoining state and have not paid the same are hereby authorized to use said money for the purpose for which it was appropriated and raised. Payments to such hospital in an adjoining state shall be made only for such inmates as are received and retained therein pursuant to rules established by the state board of charities.

Laws 1895, chap. 754, § 1, as am'd by Laws 1902, chap. 155.

§ 91p. **Reports to supervisors of appointments and committals to charitable institutions.**—Every judge, justice, superintendent or overseer of the poor, supervisor or other person who is authorized by law to make appointments or commitments to any state charitable institution, except almshouses, in which the board, instruction, care or clothing is a charge against any county, town or city, shall make a written report to the clerk of the board of supervisors of the county, or of the county in which any town is situated, or to the city clerk of any city, which are liable for any such board, instruction, care or clothing, within ten days after such appointment or commitment, and shall therein state, when known, the nationality, age, sex and residence of each person so appointed or committed and the length of time of such appointment or commitment.

State Charities Law, § 45.

§ 91q. **Reports by officers of certain institutions to clerks of supervisors and cities.**—The keeper, superintendent, secretary, director or other proper officer of a state charitable institution to

Accounts.

which any person is committed or appointed, whose board, care, instruction, tuition or clothing shall be chargeable to any city, town or county, shall make a written report to the clerk of such city or to the clerk of the board of supervisors of the county, or of the county in which such town is situated, within ten days after receiving such person therein. Such report shall state when such person was received into the institution, and, when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making the same, and the sum chargeable per week, month or year for such person. If any person so appointed or committed to any such institution shall die, be removed or discharged, such officers shall immediately report to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of the city from which such person was committed or appointed, the date of such death, removal or discharge.

State Charities Law, § 46.

§ 91r. **Verified accounts against counties, cities and towns.**—The officers mentioned in the last section shall annually, on or before the fifteenth day of October, present to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of a city from which any such person is committed and appointed, a verified report and statement of the account of such institution with such county, town or city, up to the first day of October, and in case of a claim for clothing, an itemized statement of the same; and if a part of the board, care, tuition or clothing has been paid by any person or persons, the account shall show what sum has been so paid; and the report shall show the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the appointment or commitment, and the date and length of the same, and the time to which the account has been paid, and the amount claimed to such first day of October, the sum per week or per annum charged, and if no part of such account has been paid, the report shall show such fact. Any officer who shall refuse or neglect to make such report shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town, city or county affected thereby. The clerk of the board of supervisors who shall receive any such report or account shall file and present the same to the board of supervisors of his county

Feeble-minded children.

on the second day of the annual meeting of the board next after the receipt of the same.

State Charities Law, § 47.

§ 91s. **Feeble-minded children and manner of receiving pupils.**—There shall be received and gratuitously supported in the institution one hundred and twenty feeble-minded children, as State pupils, who shall be selected from those whose parents or guardians are unable to provide for their support, in equal numbers as far as may be, from each judicial district. Such additional number of feeble-minded children as can be conveniently accommodated shall be received into the institution on such terms as shall be just. If the number of feeble-minded children admitted shall not equal the capacity of the institution, such additional number of non-teachable idiots may be admitted as can be conveniently accommodated. Feeble-minded children shall be received into the institution upon the written request of the person by whom they are sent, stating the name in full, age, place of nativity, if known, the town, city or county in which each resides, and whether such child, his parents or guardian, are able to provide for his support, in whole or in part, and if in part only what part, the degree of relationship or other circumstances of connection between him and the person requesting his admission, which statement must be verified by the affidavit of two disinterested persons, residents of the same county as the child and acquainted with the facts and circumstances stated, and certified to be credible by the county judge of the county. Such judge must also further certify that such child is an eligible and proper candidate for admission to such institution. Feeble-minded children may also be received into such institution upon the official application of a county superintendent of the poor, or the commissioners of charity of a city of the State having such officers. In the admission of feeble-minded children, preference shall be given to poor or indigent children over all others, and to such as are able or have parents able to support them only in part, over those who are or have parents who are able to wholly support such children.

State Charities Law, § 68; 3 R. S. 2839.

§ 91t. **Discharge of State pupils and payment of expenses.**—When the manager shall direct a State pupil to be discharged from the institution, the superintendent thereof may return him to the county from which he was sent, and deliver him to the keeper of

Expense of clothing state pupils.

the almshouse thereof, and the superintendent of the poor of the county shall audit and pay the actual and reasonable expenses of such return. If any town, county or person is legally liable for the support of such pupil, such expenses may be recovered by action in the name of the county by such superintendent of the poor. If the superintendent of the poor neglect or refuse to pay such expenses on demand, the treasurer of the institution may pay the same and charge the amount to the county; and the treasurer of the county shall pay the same with interest after thirty days, out of any funds in his hands not otherwise appropriated; and the supervisors shall raise the amount so paid as other county charges.

State Charities Law, § 69; 3 R. S. 2840.

§ 91u. **Expense of clothing State pupils.**—The supervisors of any county from which State pupils may have been received shall cause to be raised annually, while such pupils remain in the institution, the sum of thirty dollars for each pupil, for the purpose of furnishing suitable clothing, which shall be paid to the treasurer of the institution on or before the first day of April. The superintendent may agree with the parent, guardian or committee of a feeble-minded child, or with any person, for the support, maintenance and clothing of such a child at the institution, upon such terms and conditions as may be prescribed, by the by-laws, or approved by the managers. Every parent, guardian, committee, or other person applying for the admission into the institution of a feeble-minded child who is able, or whose parents or guardians are of sufficient ability to provide for his maintenance therein, shall at the time of his admission, deliver to the superintendent an undertaking, with one or more sureties, to be approved by the managers, conditioned for the payment to the treasurer of the institution of the amount agreed to be paid for the support, maintenance and clothing of such feeble-minded child, and for the removal of such child from the institution without expense thereto, within twenty days after the service of the notice hereinafter provided. If such child, his parents or guardians are of sufficient ability to pay only a part of the expense of supporting and maintaining him, such undertaking shall be only for his removal from the institution as above mentioned; and the superintendent may take security by note or other written agreement, with or without sureties, as he may deem proper, for such part of such expenses as such child, his parents or guardians are

Females improperly committed.

able to pay, subject, however, to the approval of the managers in the manner that shall be prescribed in the by-laws. Notice to remove a pupil shall be in writing, signed by the superintendent and directed to the parents, guardians, committee or other person upon whose request the pupil was received at the institution, at the place of residence mentioned in such request, and deposited in the post-office at Syracuse with the postage prepaid. If the pupil shall not be removed from the institution within twenty days after service of such notice, according to the conditions of the agreement and undertaking, he may be removed and disposed of by the superintendent as herein provided, in relation to State pupils, and the provisions of this article respecting the payment and recovery of the expenses of the removal and disposition of a State pupil, shall be equally applicable to expenses incurred under this section.

State Charities Law, § 70; 3 R. S. 2840.

§ 91w. **Return of females improperly committed.**—Whenever it shall appear to the satisfaction of the board of managers of any such institution, that any person committed thereto is not of proper age to be so committed or is not properly committed, or is insane or mentally incapable of being materially benefited by the discipline of any such institution, such board of managers shall cause the return of such female to the county from which she was so committed. Such female shall be so returned in the custody of one of the persons employed by such boards of managers to convey to such institutions women committed thereto, who shall deliver her into the custody of the sheriff of the county from which she was committed. Such sheriff shall take such female before the magistrate making the commitment, or some other magistrate having equal jurisdiction in such county, to be by such magistrate re-sentenced for the offense for which she was committed to any such institution and dealt with in all respects as though she had not been so committed. The costs and expenses of the return of such female, necessarily incurred and paid by any such board of managers, shall be a charge against the county from which such female was committed, to be paid by such county to such board of managers in the same manner as other county charges are collected.

State Charities Law, § 147.

CHAPTER FOUR

SETTLEMENT AND PLACE OF RELIEF OF POOR PERSONS

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| §92. Settlements, how gained. | §104. Liability, how contested. |
| §93. Qualification of last section. | §105. Neglect to contest. |
| §94. Poor persons not to be removed, and how supported. | §106. Actions, when and how to be brought. |
| §95. Proceedings to determine settlement. | §107. Penalty for bringing foreign poor into this state. |
| §96. Hearing before superintendents. | §108. Poor children under sixteen years of age. |
| §97. How to compel towns to support poor persons. | §109. Public funds for support of poor children. |
| §98. Proceedings to determine who are county poor. | §110. When not to be sent to the poor house. |
| §99. In counties without alms-house. | §111. Institutions to keep record of children. |
| §100. Decisions to be entered and filed. | §112. Removal of child. |
| §101. Appeal to the county court. | §113. Settlement, how lost. |
| §102. Penalty for removing. | |
| §103. Proceedings to compel support. | |

§ 92. **Settlements, how gained — Place of relief.**— Every person of full age, who shall be a resident and inhabitant of any town or city for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town or city, and shall so remain until he shall have gained a like settlement in some other town or city in this State, or shall remove from this State and remain therefrom one year. A minor may be emancipated from his or her father or mother and gain a separate settlement:

1. If a male, by being married and residing one year separately from the family of his father or mother.

2. If a female, by being married and having lived with her husband; in which case the husband's settlement shall be deemed that of the wife.

3. By being bound as an apprentice and serving one year by virtue of such indentures.

4. By being hired and actually serving one year for wages, to be paid such minor.

Poor Law, § 40.

The old statute is repealed and the settlement must now be ascertained from this and the next section.

People ex rel. French v. Lyke, 159 N. Y. 149.

CH. IV. SETTLEMENT AND PLACE OF RELIEF. §§ 93, 94

Settlement, poor person not to be removed.

By gaining a settlement in another state the poor person loses all claim in a settlement in any of the towns of the county and can only regain such settlement in the usual way by continuing to be a resident in some one town for one year.

Matter of Chapman, 15 Misc. 296; City Syracuse v. County Oneida, 25 Misc. 371; Sup. Poor Cattaraugus Co. v. Sup. Poor Erie Co., 50 St. Rep. 347.

The residence should be continuous and notorious such as to lead the authorities to the conclusion that there is an intention to gain a settlement.

Matter of Hector, 24 N. Y. Supp. 475; Dupuy v. Wutz, 53 N. Y. 556; De Meli v. De Meli, 120 N. Y. 491.

The settlement of the father is the settlement of the child if not emancipated.

Overseer Poor v. Overseer P. Albany, 2 Cow. 537.

This section applies to every person who shall be a resident and inhabitant of any town for one year and the members of his family who shall not have gained a separate settlement.

Sitterly v. Murray, 63 How. 367.

§ 93. **Qualification of last section.**—A woman of full age, by marrying, shall acquire the settlement of her husband. Until a poor person shall have gained a settlement in his or her own right, his or her settlement shall be deemed that of the father, if living, if not, then of the mother; but no child born in any almshouse shall gain any settlement merely by reason of the place of such birth; neither shall any child born while the mother is such poor person, gain any settlement by reason of the place of its birth. No residence of any such poor person in any almshouse, while such person, or any member of his or her family is supported or relieved at the expense of any other town, city, county or State, shall operate to give such poor person a settlement in the town where such actual residence may be.

Poor Law, § 41.

The settlement cannot be gained in a town where the actual residence may be so long as the poor person or any member of his family is supported at expense of any other municipality.

People ex rel. May v. Maynard, 160 N. Y. 453.

The revision of the Poor Law 1896 did not so change the conditions of settlement that a poor person residing in a town or city for more than one year, while relieved at the expense of the county, ceased to be a county charge and become thereafter a town or city charge.

People ex rel. French v. Lyke, 159 N. Y. 149.

§ 94. **Poor person not to be removed, and how supported.**—No person shall be removed as a poor person from any city or town to any other city or town of the same or any other county, nor

Poor, how supported.

from any county to any other county except as hereinafter provided; but every poor person, except the State poor, shall be supported in the town or county where he may be, as follows:

1. If he has gained a settlement in any town or city in such county, he shall be maintained by such town or city.

2. If he has not gained a settlement in any town or city in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendents of the poor at the expense of the county.

3. If such person be in a county where the distinction between town and county poor is abolished, he shall, in like manner, be supported at the expense of the county, and in both cases, proceedings for his relief shall be had as herein provided.

4. If such poor person be in a county where the respective towns are liable to support their poor, and has gained a settlement in some town of the same county other than that in which he may then be, he shall be supported at the expense of the town or city where he may be, and the overseers shall, within ten days after the application for relief, give notice in writing to an overseer of the town to which he shall belong, requiring him to provide for the support and relief of such poor person.

Poor Law, § 42; see form below.

NOTICE FROM ONE TOWN TO ANOTHER (IN A COUNTY WHERE THE TOWNS ARE LIABLE TO SUPPORT THEIR OWN POOR), REQUIRING THE OVERSEERS OF THE TOWN IN WHICH THE POOR PERSON HAS A RESIDENCE TO PROVIDE FOR HIS SUPPORT.

County of.....ss.:

To the Overseers of the Poor of the town of....., in said county:

You are hereby notified that, a poor person, who has gained a settlement in your town, to which he belongs, is in the town of, in said county, and is supported at the expense of the said town of....., for which the undersigned are overseers. You are, therefore, required to provide for the relief and support of the said poor person.

Given under our hands at....., this.....day of..... 19..

.....
.....

Overseers of the Poor of the town of.....

(This notice should be served on one of the overseers of the poor of the town where the poor person belongs.)

If a town grants aid to a poor person who it claims had a legal settlement in another municipality, it must within 10 days after application for relief serve the notice prescribed by subd. 4 of this section.

Matter of Melville, 23 Misc. 398.

Every poor person shall be supported in the town or county where he may be.

Overseers of Norwich v. Overseers of Poor, 15 N. Y. 341.

Determining settlement.

When a settlement is once gained in any town it remains there until a subsequent settlement is gained elsewhere.

Sitterly v. Murray, 63 How. 367.

If the poor person has not resided within the county 60 days he is not a county charge, but state poor.

See § 1007.

§ 95. **Proceedings to determine settlement.**— If, within ten days after the service of such notice, the overseer to whom the same was directed, shall not proceed to contest the allegation of the settlement of such poor person, by giving the notice hereinafter directed, he or his successors, and the town which he or they represent, shall be precluded from contesting or denying such settlement. He may, within the time mentioned, give written notice to the overseer of the town where such person may be, and from whom he has received the notice specified in the last section, that he will appear before the county superintendents, at a place and on a day therein to be specified, which day shall be at least ten days and not more than thirty days from the time of the service of such notice of hearing, to contest the alleged settlement. If the county superintendents fail to appear at the time and place so appointed, they shall, at the request of the overseers of either town, appoint some place, and some other day, for the hearing of such allegations, and cause at least five days' notice thereof to be given to such overseers; and no poor person shall be deemed to have gained a settlement, when the proper notices to contest the settlement have been served, until there has been a hearing before the superintendent thereof, and an order by them made and filed in the office of the county clerk, fixing the settlement of such poor person.

Poor Law, § 43.

If the overseer of the poor does not institute the proceeding authorized to be taken for that purpose, he and his town shall be forever precluded from denying that the settlement was in that town.

Overseer of Norwich v. Overseer, etc., 15 N. Y. 341.

The notice required must be served within the time required or the proceedings will fail.

Matter of Merville, 23 Misc. 398.

NOTICE OF OVERSEER OF THE POOR TO APPEAR BEFORE SUPERINTENDENT OF THE POOR AND CONTEST ALLEGED SETTLEMENT OF A POOR PERSON.

(Poor Law, § 43.)

County of.....ss.:

To the Overseers of the Poor of the town of....., in said county:

Please take notice that the undersigned, overseers of the poor of the town of....., in said county, will appear before the superintendents of

the poor of said county, at the poor house (or, other place, as may be designated), on the.....day of....., at ten o'clock in the forenoon, to contest the alleged settlement of....., a poor person, as set forth in your notice of the....., 19..

Dated....., 19..

.....,

Overseers of the Poor of the town of.....

§ 96. **Hearing before superintendents.**—The county superintendents shall convene whenever required by any overseer pursuant to such notice, and shall hear and determine the controversy, and may award costs, not exceeding fifteen dollars, to the prevailing party, which may be recovered in an action in a court of competent jurisdiction. Witnesses may be allowed fees as in courts of record. The decision of the superintendent shall be final and conclusive, unless an appeal therefrom shall be taken as provided by this chapter.

Poor Law. § 44; see form below.

DECISION OF SUPERINTENDENTS CONCERNING THE SETTLEMENT OF POOR PERSONS.

County of.....ss.:

The undersigned, superintendents of the poor of said county, having convened as required by the overseers of the poor of the town of....., in said county, pursuant to their notice, proceeded to hear and determine a controversy which had arisen between the said overseers and the overseers of the town of....., in said county, concerning the settlement of....., a poor person; and upon such hearing of the facts, the undersigned hereby decide that the legal settlement of the said..... as such poor person, is (or, is not) in the said town of..... And the undersigned hereby award to the overseers of the poor of the town of....., the prevailing party, the sum of.....dollars, costs of said proceeding, by them expended.

Given under our hands and seals at....., this.....day of....., 19..

..... [L. S.]
 [L. S.]
 [L. S.]
Superintendents of the Poor.

§ 97. **How to compel towns to support poor persons.**—The overseers of the poor of the town in which it may be alleged any poor person has gained a settlement, may, at any time after receiving such notice requiring them to provide for such person, take and receive such poor person to their town, and there support him; if they omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate them from the maintenance of such poor person, the charge of giving such notice, and the expense of maintaining such person, after being allowed by

Proceedings to determine poor.

the county superintendents, shall be laid before the board of supervisors at their annual meetings from year to year, as long as such expenses shall be incurred, and the supervisors shall annually add the amount of such charges to the tax to be laid upon the town to which such poor person belongs, together with such sum in addition thereto, as will pay the town incurring such expense, the interest thereon, from the time of expenditure to the time of repayment, which sum shall be assessed, levied and collected in the same manner as other charges of such town. Such moneys when collected shall be paid to the county treasurer and be by him credited to the account of the town which incurred the expense.

Poor Law, § 45.

Where overseers of the poor relieve and support poor belonging to another town at request of overseer of poor of the town where the pauper belongs, the proper remedy is to get the claim allowed by superintendent of poor and lay the same before the board of supervisors in order that they may add the amount to the tax list of the town in which the pauper belongs.

Holmes v. Brown, 13 Barb. 599.

The overseers may on receiving the notice do one of two things: contest the alleged settlement or take the pauper home to his own town and provide for him. If they do neither, then the law takes charge of the case and declares that the pauper shall be supported in the first instance by the town where the pauper is, and the expense, after being audited by county superintendent, shall be collected like other town charges out of the town which is chargeable through the agency of the board of supervisors.

Overseers of Norwich v. Overseers of Poor, 15 N. Y. 341.

§ 98. **Proceedings to determine who are county poor.**—The support of any poor person shall not be charged to the county, without the approval of the superintendents. If a poor person be sent to the county almshouse as a county poor person, the superintendents, in counties where there are town poor, shall immediately inquire into the facts, and if they are of opinion that such person has a legal settlement in any town of the county, they shall, within thirty days after such poor person shall have been received, give notice to the overseers of the poor of the town to which such poor person belongs that the expenses of such support will be charged to such town, unless the overseers within such time as the superintendents shall appoint, not less than twenty days thereafter, show that such town ought not to be so charged. On the application of the overseers, the superintendents shall re-examine the matter and take testimony in relation thereto, and decide the question; which decision shall be conclusive, unless an appeal

In counties without almshouses.

therefrom shall be taken in the manner provided in this chapter.

Poor Law, § 46; see form below.

SUPERINTENDENTS' NOTICE THAT POOR PERSON WILL BE SUPPORTED AT THE
EXPENSE OF A TOWN IN A COUNTY WHERE THE TOWNS SUPPORT THEIR
OWN POOR.

County of.....ss.:

To the Overseers of the Poor of the town of....., in said county:

....., a poor person, having been sent to the poor house as a county poor person, and the undersigned, superintendents of the poor of said county, having inquired into the fact, and being of the opinion that the said poor person has a legal settlement in the town of....., in said county, pursuant to the provisions of section 46 of the Poor Law, you are hereby notified that the expenses of the support of said poor person will be charged to the town of....., unless you, the overseers of said town, within..... (here insert such time, not less than twenty days, as the superintendent shall appoint), after the service of this notice, show that the said town of.....ought not to be so charged.

Dated at....., this.....day of....., 19..

.....,
.....,
.....;

Superintendents.

§ 99. **In counties without almshouses.**— In counties having no almshouse, no person shall be supported as a county poor person, without the direction of at least one superintendent. In such cases the overseers of the poor, where such person may be, shall, within ten days after granting him relief, give notice thereof and that such person is not chargeable to their town, to one of the superintendents who shall inquire into the circumstances, and if satisfied that such poor person has not gained a legal settlement in any town of the county, and is not a State poor person, he shall give a certificate to that effect, and that such poor person is chargeable to the county. He shall report every such case to the board of superintendents at their next meeting, who shall affirm such certificate, or, on giving at least eight days' notice to the overseers of the poor of the town interested, may annul the same. After hearing the allegations and proofs in the premises, if the superintendent to whom the overseers have given such notice shall neglect or refuse to give such certificate, the overseers may apply to the board of superintendents, who shall summarily hear and determine the matter, and whose decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter. Such appeal may also be taken from the refusal of one

CH. IV. SETTLEMENT AND PLACE OF RELIEF. §§ 100–102

Decisions, appeal, penalty for removing.

superintendent to grant such certificate when there is but one superintendent in the county.

Poor Law, § 47.

§ 100. **Decisions to be entered and filed.**—The decisions of county superintendents in relation to the settlement of poor persons, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signature of such of the superintendents as make the same; and a duplicate thereof, certified in the same manner, shall be filed in the office of the county clerk within thirty days after making such decision.

Poor Law, § 48.

§ 101. **Appeal to the county court.**—Any or either of the parties interested in a decision of the superintendent of the poor, or in any dispute that shall arise concerning the settlement of any poor person, may appeal from such decision to the county court of the county in which such decision shall be made, by serving upon the other parties interested therein, within thirty days after service upon the appellant of a notice of the same, a notice of appeal, which shall be signed by the appellant or his attorney, and which shall specify the grounds of the appeal. The hearing of such appeal may be brought on by either party in or out of term, upon notice of fourteen days. Upon such appeal a new trial of the matters in dispute shall be had in the county court without a jury, and a decision of the county court therein shall be final and conclusive, and the same costs shall be awarded as are allowed on appeals to said court.

For the purposes of this chapter the county court shall be deemed open at all times.

Poor Law, § 49.

§ 102. **Penalty for removing.**—Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county, without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county from which he is to be sent, removed or brought, or enticed to remove, shall forfeit fifty dollars, to be recovered by and in the name of the town, city or county to which such poor person shall

Support of person removed.

be sent, brought or removed, or enticed to remove, and shall be guilty of a misdemeanor.

Poor Law, § 50.

Where a person is sued for enticing a pauper under this section, the defendant may be allowed to state that he sent the pauper from his county in good faith. The penalty is incurred when any person removes or entices the pauper to remove without legal authority with intent to make the county to which the removal shall be made chargeable, etc.

Cortland v. Herkimer County, 44 N. Y. 22.

The town supporting the poor person is forbidden under penalty from removing him to the place where he is chargeable.

Matter of McCutcheon, 25 Misc. 650; Smith v. Brundage, 17 Wk. Digest, 266.

In order to maintain criminal liability under this provision it must be alleged and proven that the person guilty of bringing or enticing the pauper into a particular county did so with intent to make such county chargeable with the support of such pauper.

Foster v. Cronkhite, 35 N. Y. 139; Bellows v. Courter, 24 St. Rep. 870; Coe v. Smith, 24 Wend. 341.

The legislature did not intend to prohibit a destitute person or one who happened to be disabled while temporarily residing in one county from returning to his family and friends residing in another, though he might charge the county from which he thus removed with his support.

Foster v. Cronkhite, 35 N. Y. 139.

§ 103. **Proceeding to compel support of person removed, etc.—**
A poor person so removed, brought or enticed, or who shall of his own accord come or stray from one city, town or county into any other city, town or county not legally chargeable with his support, shall be maintained by the county superintendents of the county where he may be. They may give notice to either of the overseers of the poor of the town or city from which he was brought or enticed, or came as aforesaid, if such town or city be liable for his support, and if there be no town or city in the county from which he was brought or enticed or came liable for his support, then to either of the county superintendents of the poor of such county, within ten days after acquiring knowledge of such improper removal, informing them of such improper removal, and requiring them forthwith to take charge of such poor person. If there be no overseers or superintendents of the poor in such town, city or county, such notice shall be given to the person, by whatever name known, who has charge and care of the poor in such locality.

Poor Law, § 51; see form below.

Support of person removed.

NOTICE OF IMPROPER REMOVAL OF POOR PERSON FROM A TOWN, CITY OR COUNTY.

County of.....ss.:
To....., Superintendent of the Poor of the county of.....
(or Overseer of the Poor of the town of.....):

You are hereby notified that..... a poor and indigent person, has been improperly sent (or, carried, transported, brought or removed, or enticed to remove, as the case may be) from the said county (town or city) of.....to the county (town or city) of....., without legal authority, and there left, with intent to make the said county (town or city) of....., to which the said removal was made, chargeable with the support of the said poor person. You are, therefore, pursuant to the provisions of section 51 of the Poor Law of the state of New York, required forthwith to take charge of the said poor person.

Given at....., in said county of....., the.....day of..... 19..

.....
.....
.....
Superintendents of the Poor of the county of..... (or, Overseers of the Poor of the town of.....).

Where a poor person removes or is removed from a town not chargeable with his support in another county and is there necessarily relieved by the overseer of the poor of the town, the expense incurred and the burden of thereafter maintaining the person is as between that town and its county a charge on the county, provided the overseer gives the superintendent of the poor of his county notice of the circumstances of the case as provided by statute.

Stillwell v. Coons, 122 N. Y. 242.

This section directs that the pauper so removed shall be maintained by the county superintendent where he may be, and further provides for the giving of notice of such improper removal to the proper officer of the county or town from which he was brought, and requiring such officer to take charge of the pauper.

Cortland County v. Herkimer County, 44 N. Y. 22.

The officers of the county claiming to fix it upon another county shall give notice to the appropriate authority of the latter county informing them of such improper removal and requiring them forthwith to take charge of such pauper.

Foster v. Cronkhite, 35 N. Y. 139.
As to the sufficiency of notice, see City of Lynn v. City of Newburyport, 5 Allen, 545, 103 Mass. 117, 124 Mass. 117.

A notice which does not state that the pauper was a pauper while in the town from which he came in order that his voluntary change of residence was improper, is insufficient.

McKay v. Welch, 24 St. Rep. 838.

A removal of the pauper which will charge the county with the expense of his maintenance must be such as would subject the person concerned in it to the penalty imposed by the preceding section.

Coe v. Smith, 24 Wend. 341; Cortland County v. Herkimer County, 44 N. Y. 22.

Liability, how contested.

§ 104. **Liability, how contested.**—The county superintendents, or overseers, or other persons to whom such notice may be directed may, after the service of such notice, take and remove such poor person to their county, town or city, and there support him, and pay the expense of such notice, and of the support of such person; or they shall, within thirty days after receiving such notice, by a written instrument under their hands, notify the county superintendents from whom such notice was received, or either of them, that they deny the allegation of such improper enticing or removal, or that their town, city or county is liable for the support of such poor person.

Poor Law, § 52.

“Any pauper who shall of his own accord come or stray from any city, town or county into any other city, town or county not legally chargeable with his support,” did not give a right of action for the support of a person by a county into which he had voluntarily removed, at a time when he was not a pauper, against the county from which he had so removed.

Bellows v. Courter, 6 N. Y. Supp. 73.

When a poor person removes, or is removed, from a town in one county to a town not chargeable with his support in another county, and is there necessarily relieved by the overseers, the expense incurred and the burden of thereafter maintaining the person is, as between that town and its county, a charge on the county, provided the overseer gives the superintendent of the poor of his county notice of the circumstances of the case, as provided by the statute.

Stillwell v. Coons, 122 N. Y. 242.

Plaintiff, as superintendent, after receiving notice from the overseer of T. that he had given temporary relief to H., a pauper, who had formerly lived in B. in another county, with a statement of the circumstances of the case, believing that the removal of H. to the town of T. was prohibited, mailed to defendant, overseer of B., a notice of the removal, with a request that he provide for H. Within the thirty days prescribed by statute after service of the notice, plaintiff received an answer from defendant denying unequivocally, but not in the words of the statute, that H. was a pauper while he lived in his county and denying any liability for his support. More than six months after receipt of the answer, this action to recover for such support was commenced. Held, that as the action was not commenced within three months after receiving defendant's denial of liability, it was barred by the statute.

Stillwell v. Coons, 122 N. Y. 242.

Where such denial was served by mail, received and retained by the plaintiff without objection, held, a sufficient service.

Stillwell v. Kennedy, 51 Hun, 114.

A notice which does not state the person was a pauper while in the town from which he came, nor that his voluntary change of residence was improper, is not sufficient.

McKay v. Welch, 6 N. Y. Supp. 358; s. c., 24 St. Rep. 838.

Rev. St. N. Y., part 1, chap. 20, tit. 1, § 31, provides that no person shall be removed as a pauper from any city or town to any other city or town of the same or any other county, or from any county to any other county, but every poor person shall be supported in the county where he may be; that if

Neglect to contest.

he has gained a settlement in any town in such county he shall be maintained by such town; and that if he has not gained a settlement in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendent of the poor at the expense of the county. Such statutes, as amended by Laws of New York, 1885, chap. 546, provide that any pauper who shall, of his own accord, come or stray from one city, town or county into any other city, town or county not legally chargeable with his support, shall be maintained by the superintendent of the county where he may be, and that by taking certain proceedings the liability of the county or town from whence he came for his support may be fixed, if such county is so liable. Held, that one who had always been able to support himself and family by manual labor, though the wages earned by him were not more than sufficient for that purpose, was not a pauper, within the meaning of the statute; and where, having been a resident of the city and county of New York, he went to another county, and there met with an accident, which rendered him unable to support himself, the county from whence he came is not liable for his support.

Wood v. Simmons, 4 N. Y. Supp. 368; s. c., 51 Hun, 325.

NOTICE OF DENIAL OF REMOVAL OF POOR PERSONS.

County of.....ss.:
To the Superintendents of the Poor of.....county:
You are hereby notified that the undersigned, superintendents of the poor of the county of....., deny the allegation contained in your notice, of the supposed improper removal of....., as mentioned in your notice to the undersigned, in the manner and with the intent in said notice alleged.
Given under our hands, at....., this.....day of....., 19..
.....
.....
Superintendents of the Poor of the county of.....

§ 105. Neglect to contest.— If there shall be a neglect to take and remove such poor person, and to serve notice of such denial within the time above prescribed, the county superintendents and overseers, respectively, whose duty it was so to do, their successors, and their respective counties, cities or towns, shall be deemed to have acquiesced in the allegations contained in such first notice, and shall be forever precluded from contesting the same, and their counties, cities and towns, respectively, shall be liable for the expenses of the support of such poor person, which may be recovered from time to time, by county superintendents incurring such expenses, in the name of their county in actions against the county, city or town so liable.

Poor Law, § 53.

If there shall be a neglect to take and remove such pauper and to notify such denial, then the superintendent shall be deemed to have acquiesced in the allegations of the notice and shall be liable for the expenses of the support of such pauper.

Foster v. Cronkhite, 35 N. Y. 139.

Actions; foreign poor

The denial of liability need not follow the language of the section above quoted, but it is quite sufficient if it contains an unequivocal denial of the liability asserted in the notice.

Stillwell v. Coons, 122 N. Y. 242.

This section makes the town liable absolute and precludes it from contesting the allegations of the notice unless the facts and liability are denied by the counternotice.

McKay v. Welch, 24 St. Rep. 838.

If the allegations of such notice are denied, then a suit may be instituted to recover the expenses incurred in the support of such pauper.

Foster v. Cronkhite, 35 N. Y. 139.

The action must be commenced within three months or it is forever precluded.

Cortland County v. Herkimer County, 44 N. Y. 22; Stillwell v. Coons, 122 N. Y. 242.

§ 106. **Actions, when and how to be brought.**— Upon service of any such notice of denial, the county superintendents upon whom the same may be served, shall, within three months, commence an action in the name of their county, against the town, city or county so liable for the expenses incurred in the support of such poor person, and prosecute the same to effect; if they neglect to do so, their town, city or county, shall be precluded from all claim against the town, city or county to whose officers such first notice was directed.

Poor Law, § 54.

§ 107. **Penalty for bringing foreign poor into this State.**— Any person who shall knowingly bring or remove, or cause to be brought or removed, any poor person from any place without this State, into any county, city or town within it, and there leave or attempt to leave such poor person, with intent to make any such county, city or town, or the State, wrongfully chargeable with his support, shall forfeit fifty dollars, to be recovered by an action in a court of competent jurisdiction in the county, and in the name of the county, city or town into which such poor person shall be brought, and shall be obliged to convey such person out of the State, or support him at his own expense, and shall be guilty of a misdemeanor, and the court or magistrate before whom any person shall be convicted for a violation of this section shall require of such person satisfactory security that he will within a reasonable time, to be named by the court or magistrate, transport such person out of the State, or indemnify the town, city or county for all charges and expenses which may be incurred in his support; and

Children under sixteen years of age.

if such person shall refuse to give such security when so required, the court or magistrate shall commit him to the common jail of the county for a term not exceeding three months.

Poor Law, § 55.

In an action for bringing a poor person from out the state, it is no defense that the pauper formerly had a legal settlement in the place to which he was brought and had not subsequently gained one elsewhere, and that the defendant acted in the removal as public officers of another state in conformity with the laws of such state.

Winfield v. Mapes, 4 Denio, 571.

When a person brings a pauper from out the state into a county within the state, he is neither subject to the penalty nor to the maintenance of the pauper without the existence of the intent to charge the county.

Coe v. Smith, 24 Wend. 341.

Overseers of the poor under the order of two justices who have spent money for the maintenance of the pauper cannot maintain an action on the case against the person who brought the pauper into the town. Their remedy is under the statute to recover the penalty given in such case.

Crouse v. Mabbett, 11 John. 167.

§ 108. **Poor children under sixteen years of age — How supported.**—No justice of the peace, board of charities, police justice, or other magistrate, or court, shall commit any child under sixteen years of age, as a vagrant, truant or disorderly person, to any jail or county almshouse, but to some reformatory, or other institution, as provided for in the case of juvenile delinquents; and when such commitments are made, the justice of the peace, board of charities, police justice, or other magistrate or court making the same, shall immediately give notice to the superintendents of the poor or other authorities having charge of the poor of the county in which the commitment was made, giving the name and age of the person committed, to what institution, and the time for which committed; nor shall any county superintendents, overseers of the poor, board of charity, or other officer, send any child under the age of sixteen years, as a poor person, to any county almshouse, for support and care, or retain any such child in such almshouse, but shall provide for such child or children in families, orphan asylums, hospitals, or other appropriate institutions for the support and care of children as provided by law, except that a child under two years of age may be sent with its mother, who is a poor person, to any county almshouse, but not longer than until it is two years of age. The board of supervisors of the several counties, and board of estimate and apportionment of the county of New York, and the appropriate board or body in the county

Public funds.

of Kings shall take such action in the matter as may be necessary to carry out the provisions of this section. When any such child is committed to an orphan asylum or reformatory, it shall, when practicable, be committed to an asylum or reformatory that is governed or controlled by persons of the same religious faith as the parents of such child.

Poor Law, § 56.

The overseer of the poor in those cases where there is no county orphan asylum may place the children in any incorporated orphan asylum in the county at the expense of the town to which they were chargeable.

Nuns of St. Dominick v. L. I. City, 48 Hun, 306.

This section provides in detail for the commitment of poor children under sixteen years of age.

Matter of Knowack, 158 N. Y. 482.

Two classes of children are recognized by the act; one class in a sense criminal, which magistrates were required to commit, and the other pauper and destitute, for which the supervisors and poor authorities were required to care for.

People ex rel. Horton v. Fuller, 41 A. D. 404.

The provisions of sections 291 and 292 of the penal code may be read with the above section as referring to the two classes of children.

Matter of Riley, 31 Hun, 612; People ex rel. Van Heck v. N. Y. C. P., 101 N. Y. 195.

§ 109. **Public funds for support of poor children.**—The guardianship of the person and the custody of any indigent child may be committed to any incorporated orphan asylum or other institution incorporated for the care of orphan, friendless or destitute children, by an instrument in writing signed by the parents of such child, if both such parents shall then be living, or by the surviving parent, if either parent of such child be dead, or if either one of such parents shall have, for the period of six months then next preceding, abandoned such child, by the other of such parents, or if the father of such child shall have neglected to provide for his family during the six months then next preceding, or if such child be a bastard, by the mother of such child; or if both parents of such child shall then be dead, by the guardian of the person of such child, legally appointed, with the approval of the court or officer which appointed such guardian to be entered of record; or if both parents of such child shall have been dead and no legal guardian of the person of such child shall have been appointed, and no guardian of such child shall have been appointed by a last will and testament, or by a deed by either parent thereof, or if the parents of such child shall have abandoned such child for

CH. IV. SETTLEMENT AND PLACE OF RELIEF. §§ 110, 111

When poor children not sent to poorhouse, etc.

the period of six months then next preceding, by the mayor of the city or by the county judge of the county in which such asylum or such other institution shall be located, upon such terms, for such time, and subject to such conditions as may be agreed upon by the parties to such written instrument. And such written instrument may provide for the absolute surrender of such child to such corporation. But no such corporation shall draw or receive money from public funds for the support of any such child committed under the provisions of this section, unless it shall have been determined by a court of competent jurisdiction that such child has no relative, parent or guardian living, or that such relative, parent or guardian, if living, is destitute and actually unable to contribute to the support of such child.

Laws 1884, chap. 438, § 1.

§ 110. **When not to be sent to poorhouse — How provided for — Religious faith.**—It shall not be lawful for any county superintendent or overseer of the poor, board of charity or other officer, to send any child between the ages of two and sixteen years as a pauper, to any county poorhouse or almshouse for support and care, or to detain any child between the ages of two and sixteen years in such poorhouse or almshouse; but such county superintendents, overseers of the poor, boards of charities or other officers shall provide for such child or children, in families, orphan asylums, hospitals, or other appropriate institutions, as provided by law. The boards of supervisors of the several counties of the State are hereby directed to take such action in the matter as may be necessary to carry out the provisions of this section. When any such child shall be so provided for or placed in any orphan asylum or such other institution, such child shall, when practicable, be so provided for or placed in such asylum or other institution as shall then be controlled by persons of the same religious faith as the parents of such child.

Laws 1884, chap. 438, § 2.

§ 111. **Institutions to keep record of children.**— All institutions, public or private, incorporated or not incorporated, for the reception of minors, whether as orphan or as pauper, indigent, destitute, vagrant, disorderly or delinquent persons, are hereby required to provide and keep a record, in which shall be entered the date of reception, and the names and places of birth and residence, as nearly as the same can reasonably be ascertained, of all children

Removal of child, etc.

admitted in such institutions, and how and by whom and for what cause such children shall be placed therein, and the names, residence, birthplace and religious denomination of the parents of such children so admitted, as nearly as the same can be reasonably ascertained; and whenever any such child shall leave such institution, the proper entry shall be made in such record, showing in what manner such child shall have been disposed of, and if apprenticed to or adopted by any person or family, or otherwise placed out at service or on trial, the name and place of residence of the person or head of the family to or with whom such child shall have been so apprenticed, adopted or otherwise placed out. The Supreme Court may, upon application by a parent, relative or legal guardian of such child, after due notice to the institution and hearing had thereon, by order direct the officers of such institution to furnish such parent, relative or legal guardian with such extracts from such record relating to such child as such court may deem proper. Nothing in this section shall be construed to prevent visitation by relatives and friends in accordance with the established rules of such institutions.

Laws 1884, chap. 438, § 3, as am'd Laws 1894, chap. 54.

§ 112. **Removal of child — Change of name — When returned to parent.**—While any child which shall have been placed in such asylum, or other institution, as a pauper, in pursuance of the second section of this act, shall remain therein at the expense of the county or town to which such pauper child is chargeable, the superintendents of the poor of such county, or the overseer of the poor of such town, may, in their discretion, remove such child from such asylum or other institution and place such child in some other such institution or make such other disposition of such child as shall then be provided by law. The name of no such child shall be changed while in such institution as in this section aforesaid. But no parent of such pauper child, so in such asylum or other institution as in this section aforesaid, shall be entitled to the custody thereof except in pursuance of a judgment or order of a court or judicial officer of competent jurisdiction, adjudging or determining that the interests of such child will be promoted thereby, and that such parent is fit, competent and able to duly maintain, support and educate such child.

Laws 1884, chap. 438, § 4.

How lost.

A corporation organized under the laws of this state for the care, education and support of poor orphan children, may recover the amount due it for supporting certain children between the age of two and sixteen years, residents of Long Island City, and whom it had received, cared for and supported, on authority of written orders given by the overseer of the poor of the defendant city.

As the relief of the children was permanent and not temporary, the \$10 limitation imposed by section 42 of 2 Revised Statutes (7th ed., p. 1861), did not apply to them.

Nuns of St. Dominick v. Long Island City, 48 Hun, 306.

Relator was a charitable institution approved by the state board. Under the statutes and by commitments not in all respects perfect, children were sent to relator and its bills therefor audited by the supervisors; the defendant, county treasurer, refused to pay. Held, that the bills were a county charge, and that the court would not scrutinize the commitments with that care it would exercise if the proceeding were a habeas corpus and the commitment were claimed to be illegal or insufficient.

People ex rel. Mt. Magdalen School v. Dickson, 57 Hun, 312.

§ 113. **Settlement, how lost.**—A person who has gained a settlement in a town or city loses the same by a continuous residence elsewhere for one year. [*Added by L. 1897, ch. 203, taking effect immediately.*]

CHAPTER FIVE

SUPPORT OF BASTARDS AND PROCEEDINGS THEREON.

- §114. Penalty for removing mother of bastard; how supported after removal.
- §115. Mother and child poor persons; proceedings against county or town from which she was removed.
- §116. Mother and bastard; how to be supported.
- §117. Mother and child not to be removed without her consent.
- §118. Overseers to notify superintendents of cases of bastardy; when county chargeable.
- §119. Duty of superintendents to provide for mother and child.
- §120. Until taken charge of by superintendents, to be supported by overseers.
- §121. Overseers of towns to support bastard and mother, whether chargeable or not.
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- §147. Commitment of defendant during examination.
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Penalty for removing mother of bastard.

- that she pay for the support of the child.
- §152. If she do not comply, she must be committed, or discharged on undertaking.
- §153. Magistrates may reduce amount directed to be paid by the father or mother. Court of sessions may reduce or increase it.
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- §158. Court to hear the case; evidence on hearing.
- §159. Court may affirm, vacate or modify the order, or adjourn the hearing till the bastard be born.
- §160. If woman be not pregnant, or married before her delivery, or the child be not born alive, defendant to be discharged.
- §161. Order of the court, on affirmance.
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- §165. When the court may make an order against the mother, for the support of the bastard.
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- §168. Same.
- §169. When order of filiation vacated, except on the merits, court may make a new order of filiation, or bind the defendant to appear.
- §170. If order of filiation be vacated, except on the merits, magistrates may proceed anew.
- §171. Court to inquire into circumstances of father or mother, committed for not giving undertaking to support the bastard.
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- §175. Court to order prosecution of undertaking, when forfeited. By whom prosecuted.
- §176. In whose name undertaking to be prosecuted.
- §177. Evidence in the action, and measure of damages.
- §178. For a subsequent breach of the undertaking, new action may be brought.
- §179. Costs, how recovered, when awarded against the plaintiff.
- §180. Action may be maintained on the order of the magistrates or court.

§ 114. **Penalty for removing mother of bastard; how supported after removal.**— If the mother of any bastard, or of any child likely to be born a bastard, shall be removed, brought or enticed into any county, city or town from any other county, city or town of this state, for the purpose of avoiding the charge of such bastard or child upon the county, city or town from which she shall have been brought or enticed to remove, the same penalties shall be imposed on every such person so bringing, removing or enticing such mother to remove, as are provided in the case of the fraudulent removal of a poor person. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county

Mother and child, etc.

superintendents of the poor of the county where she shall be, if no provision be made by the father of such child.

Poor Law, § 60.

§ 115. **Mother and child poor persons: proceedings against county or town from which she was removed.**— Such mother and her child shall, in all respects, be deemed poor persons; and the same proceedings may be had by the county superintendents to charge the town, city or county from which she was removed or enticed, for the expense of supporting her and her child, as are provided in the case of poor persons fraudulently or clandestinely removed; and an action may be maintained in the same manner for said expenses and for all expenses properly incurred in apprehending the father of such child, or in seeking to compel its support by such father or its mother.

Poor Law, § 61.

§ 116. **Mother and bastard, how to be supported.**— The mother of every bastard, who shall be unable to support herself, during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other poor persons are required to be supported by the provisions of this chapter, at the expense of the city or town where such bastard shall be born, if the mother have a legal settlement in such city or town, and if it be required to support its own poor; if the mother have a settlement in any other city or town of the same county, which is required to support its own poor, then at the expense of such other city or town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.

Poor Law, § 62.

§ 117. **Mother and child not to be removed without her consent.**— The mother and her child shall not be removed from any city or town to any other city or town in the same county, nor from the county to any other county, in any case whatever, unless voluntarily taken to the county, city or town liable for their support, by the county superintendents of such county or the overseers of the poor of such city or town.

Poor Law, § 63; 2 R. S. 2310.

§ 118. **Overseers to notify superintendents of cases of bastardy — When county chargeable.**— The overseers of the poor of any city or town where a woman shall be pregnant with a child, likely

Duty of superintendents, etc.

to be born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them.

Poor Law, § 64.

§ 119. Duty of superintendents to provide for mother and child.

—The county superintendents shall provide for the support of such bastard and its mother, in the same manner as for the poor of such county.

Poor Law, § 65.

§ 120. Until taken charge of by superintendents, to be supported by overseers.—Until the county superintendents take charge of and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the city or town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a poor person chargeable to the county, who cannot be conveniently removed to the county almshouse.

Poor Law, § 66.

§ 121. Overseers of towns to support bastard and mother, whether chargeable or not.—Where a woman shall be pregnant with a child likely to be born a bastard, or to become chargeable to a city or town, or where a bastard shall be born chargeable, or likely to become chargeable to a city or town, the overseers of the poor of the city or town where such bastard shall be born, or likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother during her confinement and recovery therefrom, in the same manner as they are authorized by this chapter to provide for and support the poor of their city or town.

Poor Law, § 67.

§ 122. Moneys received by overseers from parents of bastard, how applied and accounted for.—Where any money shall be paid to an overseer, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard, the overseers may expend the same directly, in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury. They shall annually account, on oath,

Money received on account of bastard, etc.

to the board of town auditors, or to the proper auditing board of a city, at the same time that other town or city officers are required to account for expenditures of all moneys so received by them, and shall pay over the balance in their hands, and under like penalties, as are provided by this chapter, in respect to the poor moneys in their hands.

Poor Law, § 68.

§ 123. **When moneys received on account of bastard chargeable to county, how to be disposed of.**—All moneys which shall be ordered to be paid by the putative father, or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall within fifteen days after the receipt of any such moneys, pay the same into the county treasury. Any officer neglecting to make such payment shall be liable to an action by and in the name of the county, for all moneys so received and withheld, with interest from the time of receipt, at the rate of ten per centum; and shall forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county.

Poor Law, § 69.

§ 124. **Disputes concerning settlement of bastard, how determined.**—When a dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any city or town, the same shall be determined by the county superintendents of the poor, upon a hearing of the parties interested, in the same manner and with the same effect as they are authorized to determine the settlement of a poor person under this chapter.

Poor Law, § 70.

§ 125. **Proceedings when bastard is chargeable to another town.**—When a bastard shall be born, or be likely to be born in a town or city, when the legal settlement of the mother is in another town or city of the same county, which is required by law to support its own poor, the overseers of the poor of the town or city where such bastard shall be born, or be likely to be born, shall give the like notice to the overseers of the town or city where the mother's settlement may be, as is required in the case of a person becoming a poor person, under the like circumstances,

Support of bastard.

and the same proceedings shall be had, in all respects, to determine the liability of such town or city as in the case of poor persons.

The overseers of the town or city to which the mother of such bastard belongs may, before the confinement of such mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town or city to which the mother belongs shall be liable to pay all the expenses of the support of such bastard, and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, shall be assessed, together with the lawful interest on the moneys expended, on the town or city to which such mother belongs, and shall be collected in the same manner as provided for poor persons supported under the same circumstances, and the moneys so collected shall be paid to the county treasurer, for the benefit of, and to be credited to, the town which incurred such expenses.

Poor Law, § 71.

§ 126. Mode of ascertaining sum to be allowed for support of bastard.—When any town is required to support a bastard, and its mother, whether the mother have a settlement in such town or not, and no moneys shall be received from the putative father or from the mother, to defray the expense of such support, the overseers of the poor shall apply to the supervisor of the town and obtain an order for the support of such bastard, and the sustenance of its mother during her confinement and recovery therefrom, and the sum to be allowed therefor, in the same manner as is required in the case of poor persons, and the moneys paid or contracted to be paid by the overseer, pursuant to such order, shall be paid by the county treasurer in the same manner as for poor persons, and be charged to the town to whose officer such payment shall be made.

Poor Law, § 72.

§ 127. When mother and child to be removed to county almshouse.—If there be a county alms-house in any county where the towns are required to support their own poor, the overseers of the

Compromise with father of bastard, etc.

poor of a town where a bastard shall be born, or shall be likely to be born, may, with the approval of the county superintendents or any two of them, and when the situation of the mother will allow it, remove the mother of such bastard, with her child, to such almshouse, in the same manner as poor persons may be removed; the expenses of which removal shall be defrayed in like manner, and such mother and her child shall be considered as poor of the town so liable for their support, and the expense shall in like manner be estimated and paid.

Poor Law, § 73.

§ 128. **Compromise with father of bastard — When mother may receive money.**— Superintendents and overseers of the poor may make such compromise and arrangements with the putative father of any bastard child within their jurisdiction, relative to the support of such child, and they shall deem equitable and just, and thereupon discharge such putative father from all further liability for the support of such bastard.

Whenever a compromise is made with the putative father of bastard child, the mother of such child, on giving security for the support of the child, and to indemnify the city and county, or the town and county, from the maintenance of the child, to the satisfaction of the officers making the compromise, shall be entitled to receive the moneys paid by such putative father as the consideration of such compromise. If the mother of such child shall be unable to give the security, but shall be able and willing to nurse and take care of the child, she shall be paid the same weekly allowance for nursing and taking care of the child, out of the moneys paid by the father on such compromise, as he shall have been liable to pay by the order of filiation; such weekly sum to be paid the mother, may be prescribed, regulated or reduced, as in the case of an order of filiation.

Poor Law, § 74; see form below.

The superintendent or overseer of the poor may compromise with the father of the bastard child and discharge him from all further liability. The mother may receive the money or security given by the father, providing she give sufficient indemnity to the town or county for the child's support.

People ex rel. Allen v. Supt. of Poor, 3 Hill, 116.

AGREEMENT UPON COMPROMISE WITH PUTATIVE FATHER OF BASTARD.

Know all men by these presents, that whereas, complaint was made on the day of, 19.., before Esq., a justice of the peace of the county of, by, on

Compromise; costs of appeal.

oath, charging with being the reputed father of a child, of which the said is now pregnant, and which, when born, will be a bastard, and likely to become (or, the father of a bastard child, of which the said was on the day of, 19.., delivered, and which said child is) chargeable to said county; and

Whereas, the said was arrested on said charge, and brought before and justices of the peace of said county, and, the father of said child (of which the said is now pregnant) (or, so born a bastard), as aforesaid;

Now, therefore, ... of the poor of said county, for and in consideration of the sum of dollars, to paid, as such superintendent (or overseer), and by virtue of the statute in such case made and provided, do hereby compromise the said charge, and release and discharge the said from all liability to the, or to the superintendent of the poor (or overseer of the poor) thereof, by reason of the liability of the said to support the said (or bastard) child, or from any other cause, by reason of the birth of said (or bastard) child.

Given under hand and seal this day of, 19..
Signed, delivered and duly acknowledged
in the presence of and before,

.....
Justice of the Peace.

§ 129. **Compromise with putative fathers in New York.**—The commissioners of public charities of the city of New York, or any two of them, may make such compromise and arrangements with the putative fathers of bastard children in said city, relative to the support of such children, as they shall deem equitable and just, and thereupon may discharge such putative fathers from all further liability for the support of such bastards.

Poor Law, § 75.

§ 130. **Costs on appeal.**—The court must award costs to the party in whose favor an appeal is determined. When awarded against county superintendents or overseers of the poor of a town, not liable for the support of its own poor, they must be paid by the county treasurer, on delivering to him a certified copy of the order and of the taxed costs, and must be charged by him to the town in the same county, liable to support the bastard, or if there be none, to the county. In the city of New York, when costs are awarded upon an appeal, to the person charged as the father or mother of the bastard, they must, upon the production of similar vouchers, be paid by the comptroller of that city, and charged to the appropriation made to the commissioners of charities and corrections thereof.

Code Crim. Pro., § 873.

Costs, etc; definition of bastard.

§ 131. **Costs against plaintiff, how recovered.**—If, in the action, costs be awarded against the plaintiffs, they may be recovered, as follows:

1. If against the corporation of the city of New York, in the same manner as in any other action;

2. If against county superintendents or overseers of the poor, they must, upon the delivery of a transcript of the judgment, be paid by the county treasurer, and by him charged to the town in the same county, liable for the support of the bastard, or if there be none, to the county.

Code Crim. Pro., § 885.

Taxable costs are allowed.

Ont. Co. v. Moon, 12 Wend. 273; Washburn v. Overseer, 9 John. 119.

§ 132. **Definition of a bastard.**—A bastard is a child who is begotten and born,

1. Out of lawful matrimony;

2. While the husband of its mother was separate from her, for a whole year previous to its birth; or,

3. During the separation of its mother from her husband, pursuant to a judgment of a competent court.

The presumption is in all cases in favor of the legitimacy of a child. The proof as to the illegitimacy must be exceedingly strong. 1 Greenleaf Ev. §§ 28, 344; 1 Taylor Ev. §§ 16, 106. The law is unwilling to bastardize children and throws the proof on the party who alleges illegitimacy; and in the absence of evidence to the contrary, a child, *eo nomine*, is, therefore, a legitimate child.

Caujolle v. Ferrie, 23 N. Y. 90, 107.

If the mother of the alleged bastard was a married woman, whose husband was living at the time of the alleged illicit intercourse and the birth of the child, she is not competent as a witness to establish the nonaccess of the husband, nor his absence from the state, nor any fact which may be proved by the testimony. People v. Overseers of Ontario, 15 Barb. 285; Chamberlain v. People, 23 N. Y. 85, 90. But from the necessity of the case, she is a competent witness to prove the illicit intercourse and who is, in fact, the father of the child. Id., Ratcliff v. Wales, 1 Hill, 63. This common-law rule, so laid down, was not changed by the adoption of sections 828 and 831 of the Code of Civil Procedure relating to the competency of a wife. People v. Court of Sessions of Ontario Co., 45 Hun, 54.

The mother of a bastard child, in bastardy proceedings, was asked and allowed to answer, under objection, the question, who was its father. It was held that, although the question was perhaps liable to the objection that it called for a conclusion, yet the reception of such answer would not necessitate the reversal of a judgment rendered affirming an order of filiation theretofore made and issued, if it was without prejudice to the defendant by reason of being the unavoidable conclusion from the testimony in detail given by the same witness.

People ex rel. Kenfield v. Lyon, 83 Hun, 303.

§ 133. **Who are liable for its support.**—The father and mother of a bastard are liable for its support. In case of their neglect

Application as to facts.

or inability, it must be supported by the county, city or town in which it is born.

After an order of filiation, an infant is bound to support his illegitimate child, and he is obliged to indemnify the city, town or county against the support of his illegitimate child, and he must enter into a bond with sureties for that purpose, as the only means by which he can obtain a discharge from arrest.

People v. Moore, 4 Den. 518.

At common law the putative father was under no liability to maintain his illegitimate offspring, and as that liability has been wholly created by statute, the remedy there prescribed to enforce the liability must be followed.

Moncrief v. Ely, 10 Wend. 406; *Birdsall v. Egerton*, 5 Wend. 619.

Rheel v. Hicks, 25 N. Y. 289, 291.

Upon the strength of the natural or moral obligation arising out of the relation of the putative father to his child, an action at common law lies, for the maintenance and sustenance of his child upon express promise; and where he admits himself the father and adopts the child, while such adoption continues a promise may be implied in favor of the party furnishing such sustenance; but he may renounce the adoption and terminate this implied assumpsit, and then the statute remedy must be pursued.

Moncrief v. Ely, 10 Wend. 406; *Birdsall v. Egerton*, 25 Wend. 619.

There is nothing illegal in an undertaking by a putative father to support his illegitimate child or to pay a sum of money in consideration of such support being furnished by another, though it be the mother of the child.

Hook v. Pratt, 78 N. Y. 371, 376.

Upon principle and authority such a promise must be regarded as valid.

Todd v. Weber, 95 N. Y. 181, 190.

As against the mother of a bastard child, the putative father has no legal right to its custody. The mother, as its natural guardian, is bound to maintain it, and is entitled to the control of it. It is only by provision of statute and the intervention of public officers that the father can be compelled to support it.

People v. Kling, 6 Barb. 366.

The mother of a bastard child is entitled to its custody.

Robalina v. Armstrong, 15 Barb. 247.

§ 134. **Application to inquire into the facts.**—If a woman be delivered of a bastard, or be pregnant of a child likely to be born such, and which is chargeable to a county, city or town, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the woman is, must apply to a justice of the peace or police justice in the county, to inquire into the facts of the case.

The justice can only have jurisdiction in the county where the woman is, and the application can only be made by the superintendent of the poor of the county, or the overseers of the poor of the town where the woman is. If the

Examination by magistrate.

application be made by a person other than such officer, it is irregular, and the justice acquires no jurisdiction.

Sprague v. Eccleston, 1 Lans. 74.

In the case of *Tyler v. Rose*, 17 Wkly. Dig. 454, it was held that under the old statute the words "where such woman shall be," mean her actual domicile or residence, not where she may be during a temporary absence from home.

An overseer of the poor in bastardy proceedings is a party in such sense that the proceedings are void if there is affinity between him and the justice.

Rivenburgh v. Henness, 4 Lans. 208.

§ 135. **Examination by the magistrate and warrant against the father.**—The magistrate must, by the examination of the woman on oath, and any other testimony which may be offered, ascertain the father of the bastard, and must issue his warrant directed to a peace officer of the county, commanding him, without delay, to apprehend the father, and bring him before the justice, for the purpose of having an adjudication as to the affiliation of the bastard.

§ 136. **Justice designated as a magistrate, and person proceeded against as defendant.**—An officer issuing a warrant or making an examination, as provided in this chapter, is designated as a magistrate, and the person against whom the warrant is issued, as the defendant.

§ 137. **Warrant, when to be served in another county.**—If the defendant reside in another county than that in which the warrant issued, the magistrate must, by an indorsement thereon, direct the sum in which the defendant shall give security, and the officer must deliver the warrant to a justice of the peace or police justice in the city or town in which the defendant resides or is found. The magistrate to whom it is presented, on proof, under oath, of the signature of the magistrate who issued the warrant, must then indorse a direction thereon, that it be served in the county in which he resides, and the defendant may be arrested in that county accordingly. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterward appear that the warrant was illegally or improperly used.

§ 138. **Magistrate in another county, may take undertaking, et cetera.**—When the defendant is arrested in another county, he

Undertaking before magistrate.

must be taken before the magistrate who indorsed the warrant, or before another magistrate of the same city or county, who may take from the defendant an undertaking, with sufficient sureties, to the effect:

1. That he will indemnify the county, and town or city, where the bastard was or is likely to be born, and every other county, town or city, against any expense for the support of the bastard, or of its mother during her confinement and recovery, and to pay the costs of arresting the defendant, and of any order of filiation that may be made, or that the sureties will pay the sum indorsed on the warrant; or

2. That the defendant will appear and answer the charge at the next county court of the county where the warrant was issued, and obey its order thereon.

The bond ought to contain but one of the alternatives given by the statute. It should contain but one condition. If a putative father gives a bond under this section, conditioned that he will indemnify the county *or* that he will appear at the next court of sessions, the bond is valid and may be enforced.

People v. Tilton, 13 Wend. 597.

It should be in the form prescribed by this section. If it contain conditions in addition to those specified in the section it is void.

People v. Meighan, 1 Hill, 298.

§ 139. On giving undertaking, defendant to be discharged.—When either of the undertakings mentioned in the last section is given, the magistrate must discharge the defendant, and must indorse a certificate of the discharge upon the warrant. He must also deliver the warrant with the undertaking, to the officer, who must return it to the magistrate granting the warrant, by whom the same proceedings must be had, as if he had taken the undertaking.

§ 140. If undertaking not given, defendant to be taken before magistrate who issued the warrant.—If the defendant do not give security, as provided in section 844, the officer must take him before the magistrate who issued the warrant.

§ 141. Before what magistrate in the same county, defendant to be taken, when the magistrate issuing the warrant is unable to act.—If, however, the magistrate who issued the warrant be absent or unable to act, the defendant must be taken before the nearest or most accessible magistrate in the same county. The

Examination by magistrate.

officer must, at the same time, deliver to the magistrate, the warrant with his return indorsed and subscribed by him.

§ 142. **The magistrate to associate with himself, another magistrate, and they to examine the matter.**—The magistrate before whom the defendant is brought, as provided in the last two sections, must immediately associate with himself, another justice of the peace or police justice in the same county or city; and the two magistrates thus associated, must inquire into the charge, and must examine on oath, the woman who is the mother of, or pregnant with, the bastard in the presence of the defendant, in respect to the charge, and hear any testimony which may be offered in relation thereto.

The justices have no authority to make the examination of the defendant in his absence. If they should they clearly could found no valid order of filiation upon it. Whenever the examination is made, whether at the time the person charged is first brought before the magistrate issuing the warrant, or at the adjourned day, it is to be made in the same manner, and the statute in either case contemplates that such person shall be present until the final determination of the proceedings.

The People v. Jayne, 27 Barb. 58, 60; and see, also, Rheel v. Hicks, 25 N. Y. 296.

§ 143. **Adjournment of examination — Security from defendant.**—The magistrates may, on the application of the defendant, for good cause, adjourn the examination, not exceeding thirty days, upon the defendant giving an undertaking, with two sufficient sureties, to the effect that he will appear before the magistrates at the time appointed, or that the sureties will pay the sum mentioned therein, which must be fixed by the magistrates, and which must be a full indemnity for the expense of supporting the bastard and its mother, as provided in section 851. Until the determination by the magistrates, if not admitted to bail, the defendant must be detained in custody of an officer, or be committed to the common jail for detention in the same manner as a prisoner arrested in a civil cause. [*Thus amended by L. 1894, ch. 221, taking effect September 1, 1894.*]

Where a bond is given upon an adjournment of an examination in a case of bastardy, conditioned for the appearance of the person charged, at the adjourned day, such person is bound not only to appear but to give his continued attendance until the examination and subsequent proceedings are finally closed. If, after appearing at the place of examination, the accused, before the proceedings are closed, departs therefrom without leave and goes to his home and remains absent until the next morning, and is not present when the order of filiation is made, this amounts to a breach of the bond.

People v. Jayne et al., 27 Barb. 58.

Determination of case.

The purpose of the bond required by this section is to release the defendant from arrest; without it he would have to remain under arrest as the examination could not proceed without his presence. The object of the requirement is not only to secure the attendance of the defendant at the adjourned day, but during the trial until the termination thereof. The undertaking binds him to appear at and during the examination, which may last one or several days, and which may, from the engagements of the justices, or other contingencies, be adjourned from time to time. The sureties of a bond are not discharged from liability by adjournments of the proceedings after the same is commenced on the adjourned day.

People v. Milham, 100 N. Y. 273.

There is no breach of a bond by the failure of the defendant to appear on the adjourned day, before the justice and a different associate justice, the former associate justice being absent.

People v. Boardman, 24 How. Pr. 512.

The above section of the Code does not prohibit in bastardy proceedings more than one adjournment, nor adjournments for more than thirty days when the adjournments are taken by the consent of both parties; it merely limits the time of any one adjournment, without consent to thirty days.

A bond given upon adjournment in such proceedings is not invalidated by adjournments for more than thirty days, on defendant's request, and by consent.

People v. Higgins, 77 Hun, 163.

§ 144. Determination of the case, and order of the magistrates.

— Upon the hearing, the magistrates must determine who is the father of the bastard, and must proceed as follows:

1. If they determine that the defendant is not the father of the bastard, he must be forthwith discharged;

2. If they determine that he is the father, they must make an order of filiation, specifying therein the sum to be paid weekly or otherwise, by the defendant for the support of the bastard; and if the mother be indigent, the sum to be paid by the defendant for her support, during her confinement and recovery; and in case said bastard shall die, the defendant will pay the necessary funeral expenses.

3. They must certify the reasonable costs of arresting the defendant, and of the order of filiation;

4. They must reduce their proceedings to writing, and subscribe them.

Adjudication of two justices in favor of a party charged with being the father of a bastard child, is a bar to a second proceeding against him respecting the same matter,

Thayer v. The Overseers of the Poor of the Town of Hamilton, 5 Hill, 443.

The case of People ex rel. v. Tompkins Gen. Ses., 19 Wend. 154, is to the effect that an appeal will not lie by the superintendents of a county from an adjudication of justices in favor of a party charged with being the father of a bastard child, but it was there intimated that such an adjudication is

Defendant to pay cash, etc.

not a bar to subsequent proceedings against the party upon the same charge. This latter holding was criticized and overruled by the court in the case first above mentioned.

Costs.—The reasonable costs to be certified by the justices are the taxable costs.

Mayham v. Allen, 50 Hun, 343.

§ 145. Defendant to pay the costs, and give undertaking for support, or for appearance at county court.—If the defendant be adjudged to the father, he must immediately pay the amount certified for the costs of the arrest and of the order of filiation, and enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect,

1. That he will pay weekly or otherwise, as may have been ordered, the sum directed for the support of the child, and of the mother during her confinement and recovery, or which may be ordered by the county court of the county; and that he will indemnify the county, and town or city, where the bastard was or may be born (as the case may be), and every other county, town or city, which may have been or may be put to the expense for the support of the bastard, or of its mother during her confinement and recovery, against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the magistrates; or,

2. That he will appear at the next term of the county court of the county, to answer the charge and obey its order thereon, or that the sureties will pay a sum equal to a full indemnity for supporting the bastard and its mother, as provided in the first subdivision of section 844.

If the bond is conditioned that he will pay the sum directed in the order of filiation or that he will appear at the next court of sessions it is valid, although not strictly conformable to the statute, since it should have embraced but one of the alternatives (*People v. Tilton*, 13 Wend. 597); and where the bond is conditional for the performance of both alternatives; so that the obligor may discharge his obligation by a compliance with one of them, a breach assigning a nonperformance of one of the alternatives is bad. *Id.*

But if the bond embrace conjointly the two conditions specified in this section, it cannot be enforced. No action can be maintained thereon, because the action for failure to pay the sum named in the order is to be brought by the overseers of the poor, and the action for failure to appear at the court of sessions by the district attorney of the county in the name of the people.

A strict compliance with the direction contained in the statute is not a mere matter of form, but is very material.

Hoagland v. Hudson, 8 How. Pr. 343.

Defendant discharged, when.

A bond taken by a justice of the peace containing, in addition to the provisions required by law, others, imposing further obligations on the obligor, is void.

People v. Meighan, 1 Hill, 298. This case was followed in *People v. Mitchell*, 4 Sandf. 466.

A bond executed under subdivision 2 of this section is, in effect, an appeal. Where the bond so executed does not conform to the provisions of the section it is inoperative, and the court of sessions should dismiss the appeal.

People ex rel. Downs v. Lindsay, 53 Hun, 234.

An undertaking, on an appeal, executed pursuant to subdivision 2, cannot be amended by the court of sessions when it is defective.

Ramsey v. Childs, 34 Hun, 329.

In an action on such an undertaking, it is error to exclude evidence that the order in pursuance of which it was given was void, for want of jurisdiction, by reason of the absence of one of the magistrates, who should have taken part in the proceedings.

People ex rel. Commissioners v. Dando, 20 Abb. N. C. 245.

Where the condition of the bond is to appear at the next term of the county court and answer the charge, etc., if the defendant appear at such term the condition of the bond is satisfied, and a default at the term to which the appeal was adjourned will not constitute a breach.

People v. Greene, 5 Hill, 647. In speaking of this case the court of appeals say, in *People ex rel. Van Aken v. Millham*, 100 N. Y. 273, 279: "If, in that case, the hearing had been commenced at the first term, and had been postponed to any day during the same term, and the defendant had failed to appear at the adjourned day, then there would have been a different question, and no doubt in such case the court would have held that there was a breach of the bond."

§ 146. On giving undertaking, defendant to be discharged; otherwise, to be committed.—Upon a compliance with the provisions of the last section, the magistrate must discharge the defendant; but otherwise, they or either of them must, by warrant, commit him to the county jail, or in the city of New York to the city prison of that city, until he be discharged by the county court of the county, or deliver an undertaking, as prescribed by the last section.

If a reputed father of a bastard child, against whom an order of filiation has been made, shall not pay the amount for the costs of apprehending him and of the order of filiation, the justices may issue a warrant for his commitment, though he has executed a bond pursuant to the statute. And where such bond has been given, but the costs are not paid, the warrant should direct the father to be safely kept until discharged by the court of sessions or until he shall pay the costs.

The People ex rel. The Overseers of the Poor of Hastings v. Stowell, 2 Den. 127.

In that case Judge Bronson says: "It is true that the 15th section commences by saying, that 'upon such bond being executed to the satisfaction of the justices, they shall discharge such person from his arrest;' and it concludes by declaring that when committed to prison he shall remain there

Commitment of defendant; examination, etc.

until discharged by the court of general sessions, or 'until he shall execute such bond;' and in neither of those places is anything said about costs. But every statute must, if possible, be so construed that there will be harmony in all its provisions, and that can be done in this case. The words 'such bond,' in both places where they occur, must be understood, of a bond, preceded or accompanied by the payment of costs. This reading, while it does no violence to the language of the statute, will give effect to the manifest intention of the legislature. The Code of Criminal Procedure (§§ 851, 852) requires no such elliptical construction. Section 851 enacts that 'if the defendant be adjudged to be the father, he must immediately pay the amount certified for the costs of the arrest and order of filiation, and enter into an undertaking, with sufficient sureties, approved by the magistrates, to the effect,' etc. Section 852 reads: 'Upon a compliance with the provisions of the last section, the magistrates must discharge the defendant; but otherwise they, or either of them, must, by warrant, commit him to the county jail,' etc. A neglect or refusal to pay the costs of apprehension and filiation, is not 'a compliance with the provisions of the last section' any more than a neglect or refusal to give an undertaking would be."

The lying-in expenses and the costs of the order and appeal may be enforced by attachment, where the bond of indemnity executed by the appellant under the order of sessions provides only against future expenses.

Roy v. Targee, 7 Wend. 359.

§ 147. **Commitment of defendant, during examination.**—During the examination, and until the defendant is discharged by the magistrate, he must remain in custody of the officer who arrested him, unless an undertaking has been given for his appearance, as provided in sections 844 and 849; and when committed to prison, he must be actually confined therein.

§ 148. **Proceedings by magistrate when security is given by defendant on arrest out of the county.**—When security taken out of the county, for the appearance of the defendant at the county court, as provided in section 844, is returned to the magistrate who issued the warrant, he must associate with himself another magistrate of the same county, and the magistrates thus associated must proceed as provided in sections 848 to 850, both inclusive.

§ 149. **Examination in such case, and order thereon.**—The examination may be had, and the order of filiation made, in the absence of the defendant, unless, before the order is made, he require of the magistrate issuing the warrant, that the examination be had in his presence, in which case the examination must be had, as if the defendant had originally appeared.

§ 150. **Magistrate may compel mother to disclose the father of the bastard; proceedings, if she refuse.**—In making an examination authorized by this chapter, the magistrate issuing the warrant, or

If mother possesses property, etc.

the magistrates making the examination, may compel the mother of a bastard, chargeable to a county, city or town, or a woman pregnant of a child likely to be born such, to disclose the name of the father of the bastard; or if she refuse to do so, may, by a warrant setting forth the cause thereof, at the expiration of one month from her delivery, if sufficiently recovered, commit her to the county jail, or in the city of New York, to the city prison of that city, until she disclose the name of the father.

Under the old statute of 1801, the power to commit a mother was not expressly given. It was at most nothing but an implied power. The case of *Scott v. Ely*, 4 Wend. 555, was decided under that statute, and the court said: "The relief intended to be afforded could not be obtained in all cases unless the mother could be compelled to discover the putative father. Upon the principle that necessary powers are implied, it is correct, perhaps, to consider the justices clothed with the power to commit." Under the section as it now stands the justice is given the express power to commit the mother of a bastard chargeable to a county, town or city, who refuses to disclose the name of the putative father.

§ 151. If mother possesses property, two magistrates may make an order that she pay for the support of the child.—If the mother of a bastard, chargeable or likely to become chargeable, as provided in section 840, be possessed of property in her own right, any two magistrates of the county or city where she is, on the application of any of the officers mentioned in that section, must examine into the matter, and may make an order charging the mother with the payment of money weekly, or otherwise, for the support of the bastard.

The child does not cease to be chargeable to the town in consequence of the ability of the father or mother to maintain it. The mother is under no higher or stronger obligation to support her illegitimate child than the father is, and the father cannot escape the responsibility which has been fixed upon him by an order and recognizance by proving the ability of the mother to provide for the maintenance of the child.

People v. Corbett, 8 Wend. 520, cited and approved in *The People v. Haddock*, 12 Wend. 475.

§ 152. If she do not comply, she must be committed, or discharged on undertaking.—If, after service of the order upon the mother, she do not comply therewith, she must be committed to the county jail, or in the city of New York, to the city prison of that city, until she comply, or enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect that she will appear at the next term of the county court of the county, to answer the matters stated in the order, and obey its order

Magistrates may reduce amount.

thereon, or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrates.

§ 153. **Magistrates may reduce amount directed to be paid by the father or mother; county court may reduce or increase it.**—The magistrates who may have made an order against the father or mother of a bastard, as provided in sections 850 and 857, may, from time to time, for good cause, reduce the amount therein directed to be paid, and upon the application of any of the officers mentioned in section 840, the county court of the county, upon ten days' notice to those officers, or to the father and mother of the bastard, may reduce or increase the amount so directed to be paid.

§ 154. **Proceedings against absconding father or mother.**—If the father or mother of a bastard, or of a child likely to be born such, abscond from their place of residence, leaving the bastard chargeable or likely to become chargeable to the public, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the bastard was born, or is likely to be born, may apply to any two magistrates of the city or county where any property, real or personal, of the father or mother may be, for authority to take the same. Upon due proof of the facts on oath, to the satisfaction of the magistrates, they must issue their warrant, and proceed thereon, in the manner provided in title VIII, of this part, in relation to persons absconding and leaving their children chargeable to the public.

§ 155. **Who may appeal, and in what cases.**—A person deeming himself aggrieved by the order of two magistrates, made pursuant to the last chapter, may appeal therefrom to the next term of the county court of the county; except that a person who has executed an undertaking to obey an order of filiation, and indemnify the public, as provided in section 851, cannot appeal from any part of the order mentioned in section 850, than that which fixes the weekly or other allowance to be paid.

Section 851 provides for two distinct kinds of undertakings, and is in the alternative, either that the defendant will pay the sum directed for the support of the child, or will appear at the next court of sessions of the county to answer the charge and obey its order thereon. If an undertaking had

Appeal.

been given as provided in the first part of section 851 for the payment of the weekly sum, the only question that can be raised is as to the amount of the allowance. But when the defendant gives an undertaking only for his appearance, the court of general sessions is at liberty, upon the appeal, to review the entire order made by the magistrates.

People ex rel. Commissioners v. Schildwachter, 87 Hun, 363.

An appeal to the sessions does not lie by the superintendents of the poor of a county from an adjudication of two justices in favor of a party charged with being the father of a bastard child.

People v. Tompkins Gen. Sessions, 19 Wend. 154.

This case was decided under the sections of the Revised Statutes from which this section was taken. It seems evident that the practice has not been changed, and that the same rule now prevails. This case was followed in *Thayer v. The Overseers of the Poor of Hamilton*, 5 Hill, 443, where it was decided that the adjudication of justices in favor of a person charged with being the father of a bastard is a final decision, and that the public officers have no right to appeal.

In *Stowell v. Overseers of Volney*, 5 Den. 101, the court cites *Thayer v. Overseers, etc., of Hamilton*, supra, and says: "The principle of that decision commends itself to our sense of justice. The question whether he is the father, and, therefore, liable for such support, is, in some sort, a public question; and the trial upon a charge of that character, upon the complaint of any one town, and an acquittal upon such trial, should protect him against being harassed by other proceedings of the same character. He is found by such trial innocent of the fact which, in its consequences, is to charge him with the support of the child."

§ 156. **Appeal, how taken.**—When the father or mother of the bastard has entered into an undertaking for appearance at the next term of the county court of the county, as provided in sections 851 and 858, it is an appeal from the order of filiation or maintenance, and no other notice thereof is necessary. In any other case, the appeal is taken, by a written notice of at least ten days before the court, to the magistrates who made the order, and to the party affected thereby, or to the officer at whose instance it was obtained.

Where the undertaking, executed under the statute with a view to an appeal from an order of filiation, does not conform to the provisions of section 851 of the Code of Criminal Procedure, it is inoperative, and the court of sessions should dismiss the appeal.

People ex rel. Downs v. Lindsay, 53 Hun, 234.

Before the adoption of this section of the Code of Criminal Procedure, under the old Revised Statutes, it was decided, in the case of *Stowell v. Overseers of Olney*, 5 Den. 93, that if a party charged as a father gives a bond to appear at the next general sessions, it operates as an appeal to the sessions. This is now expressly provided for in this section.

§ 157. **Papers to be transmitted by magistrates to county court.**
—The magistrates receiving an undertaking for appearance at

Hearing of case, etc.

the county court must transmit it to the court before its opening, with a certified copy of the order appealed from.

§ 158. **Court to hear the case — Evidence on hearing.**— The court must immediately, or at any other time it may appoint, proceed to hear the allegations and proofs of the parties; and the party in whose favor the order was made, must support it by evidence. If the mother of the bastard be dead or insane, her testimony on the examination before the magistrates is receivable in evidence.

The case of *Stovall v. Overseers of Olney*, 5 Den. 98, was where the defendant had been adjudged the putative father of a bastard in an action brought by one town, and appealed from the order of filiation. Before the appeal was consummated the mother moved into another town, and there gave birth to the child, which became a charge upon such town. The overseers of the town instituting the first proceedings settled with the defendant. The overseer of the town into which the mother moved brought another action against the defendant, and the defendant pleaded *res adjudicata*. It was held that the proceedings in the first case, in which the appeal was taken, are incomplete until a decision by the general sessions. It is virtually a suit commenced before the justices and continued before the sessions, but which never reached a final adjudication. The adjustment which took place was a discontinuance, and is no bar to another suit.

On an appeal to the sessions from an order of filiation, the appellant is not entitled to a trial by jury.

Roy v. Targee, 7 Wend. 359.

Appeals to courts of general sessions from orders made by magistrates respecting bastards, like appeals from district (justice's) courts to county courts, involve a new trial, and it is only upon showing that the mother of the bastard is dead or insane that her former evidence will be admissible on such new trial.

People ex rel. Commissioners v. Schildwachter, 87 Hun, 363.

§ 159. **Court may affirm, vacate or modify the order or adjourn the hearing till the bastard be born.**— The court may affirm or vacate an order of filiation or maintenance, or may reduce or increase the sum ordered to be paid for the support of the bastard or its mother; and, disregarding defects in form in the order, must amend it according to the fact. If, when the appeal is heard, the bastard be not born, the court may adjourn the hearing, until it be born, and in that case, must take an undertaking from the party appealing, for his appearance, in such sum and with such sureties as the court may deem sufficient.

§ 160. **In what cases defendant to be discharged.**— If the woman alleged to be pregnant, be not so or be married before her delivery, or the child be not born alive, the defendant must be

Order of court, etc.

discharged from custody, or from the obligation of his undertaking, either by the court or magistrates, upon that fact being made to appear.

§ 161. **Order of the court on affirmance.**— If, upon the hearing of the appeal, the county court affirm an order of filiation or maintenance, it must require the defendant to enter into an undertaking, with sufficient surety, approved by the court, to the effect that he will pay, weekly or otherwise, according to the order as made by the magistrate or modified by the court, the sum directed for the support of the bastard, and of the mother during her confinement and recovery; and that he will indemnify the county, and town or city where the bastard was or may be born (as the case may be), and every other county, town or city, which may have been put to expense for the support of the child, or of its mother during her confinement and recovery against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court.

§ 162. **Commitment of defendant, if he fail to give undertaking.**— If, on judgment of affirmance, the defendant do not enter into an undertaking, as provided in the last section, he must be committed to the county jail, or in the city of New York, to the city prison of that city, until he do so, or be discharged by the court.

§ 163. **Undertaking for appearance on appeal, when forfeited.**— The undertaking for the appearance of the defendant, at the county court, upon an appeal, is forfeited by his neglect to appear, or to give the undertaking mentioned in the last two sections, unless he be discharged by the court.

§ 164. **When mother bound to appear at the county court to proceed as upon an appeal; when the court may make an order against the mother, for support of the bastard.**— When the mother of a bastard is bound to appear at the county court, or is committed as provided in section 858, the court must proceed in respect to the matter, in the same manner as upon an appeal.

§ 165. **When the court may make an order against the mother, for the support of the bastard.**— If the court be satisfied that the

Proceedings against mother; appeal, etc.

mother has property in her own right, sufficient to enable her to support the bastard or contribute to its support, it must confirm the order mentioned in section 857, or may vary the sum ordered to be paid weekly or otherwise; or if not, it must discharge her from custody or from the obligation of her undertaking.

§ 166. **Proceedings against the mother, on affirmance or modification of such order.**—If the court affirm or modify the order, as provided in the last section, it must require the defendant to enter into an undertaking, with sufficient sureties approved by the court, to the effect that she will pay, weekly or otherwise, according to the order, as made by the magistrates or modified by the court, the sum directed for the support of the bastard, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court. If the undertaking be not given she must be committed in the manner provided in section 868.

§ 167. **Costs on appeal, when awarded and how paid.**—The court must award costs to the party in whose favor an appeal is determined. When awarded against county superintendents or overseers of the poor of a town, not liable for the support of its own poor, they must be paid by the county treasurer, on delivering to him a certified copy of the order and of the taxed costs, and must be charged by him to the town in the same county, liable to support the bastard, or if there be none, to the county. In the city of New York, when costs are awarded upon an appeal, to the person charged as the father or mother of the bastard, they must, upon the production of similar vouchers, be paid by the comptroller of that city, and charged to the appropriation made to the commissioners of charities and corrections thereof.

Where a defendant has been held on a trial before two justices of the peace by an order of filiation, and on appeal to the court of sessions such order has been vacated and the defendant held for trial on the merits, in which he is held not to be the father of the child, the costs are to be governed by section 3073 of the Code of Civil Procedure, the proceeding being analogous to that on an appeal from a justice's court, where a new trial is had in the county court.

Mayham v. Allen, 50 Hun, 343.

Under the old Revised Statutes it was held that allowances could not be granted on an appeal from an order of filiation; that only the taxable costs as prescribed by statute for similar appeals could be allowed.

Superintendent of the Poor of Ontario v. Moore, 12 Wend. 273.

Order of filiation, etc.

§ 168. **Id.**— In other cases, the payment of the costs may be enforced by the court, as in a civil action. If the party against whom they are awarded, reside out of the jurisdiction of the court, an action may be brought on the order, by the party entitled to the costs, in which the production of a certified copy of the order and of the taxed costs, is conclusive evidence.

§ 169. **When an order of filiation vacated, et cetera.**— If the court vacate an order of filiation for any other cause than upon the merits, it must proceed, and may make an original order of filiation, in the manner prescribed in the second subdivision of section 850, or bind the person charged, in an undertaking, in a sum and with sureties approved by the court, to appear at the next term of the county court.

§ 170. **If order of filiation be vacated, except on the merits, magistrates may proceed anew.**— If the order be vacated for any other cause than on the merits, and the person charged be bound as provided in the last section, the same proceedings may be had by the magistrate, for the apprehension of the defendant, and for making an order of filiation, and for the commitment of the defendant for not giving an undertaking, as are authorized in the first instance. And the same proceedings must be subsequently had in all respects.

§ 171. **Court to inquire into circumstances of father or mother, committed for not giving undertaking to support the bastard.**— When a person is committed to prison, charged as the father of a bastard, or of a child likely to be born a bastard, and when the mother of a bastard is so committed, for not giving an undertaking to support the bastard, or to indemnify the public, the court must inquire, from time to time, into the circumstances and ability of the father or mother to support the bastard and to produce security therefor.

§ 172. **A father or mother unable to support the bastard, may be discharged.**— If the court be at any time satisfied that the father or mother is wholly unable to support the bastard, or to contribute to its support, or to procure security therefor, it may, in its discretion, order the father or mother to be discharged from imprisonment; *but if it shall thereafter at any time appear to the satisfac-*

Notice before discharge.

tion of the court of general sessions of the county of New York, or to the county court of any other county, that the defendant has become and is able to contribute to the support of the bastard, and fails so to do, the court may revoke and vacate the aforesaid order discharging the defendant from arrest, and may order him to be rearrested and may require him to give a new undertaking in the manner provided in subdivision one of section eight hundred and fifty-one of the code of criminal procedure, and upon his failure to give such undertaking shall commit him to jail in the manner provided in section eight hundred and fifty-two of the code of criminal procedure.

Amended by L. 1904, chap. 520. In effect Sept. 1. 1904.

§ 173. **Notice before discharge, and examination of the matter.**— Before granting the order, the court must be satisfied that reasonable notice has been given to the overseers of the poor, or to the county superintendents, or chief officers of the alms-house, at whose instance the party was committed, or the intention to apply for a discharge, and must hear the allegations and proofs of the superintendents, overseers or officers, and may examine the party applying on oath respecting the subject of the application.

§ 174. **Party cannot be discharged, but by the court.**— A person committed, as provided in section 877, cannot be discharged from imprisonment, except by the county court of the county.

§ 175. **Court to order prosecution of undertaking, when forfeited — By whom prosecuted.**— If an undertaking for the appearance at the county court of a person charged as the father or mother of a bastard, be forfeited, the court may order it to be prosecuted; and the sum mentioned therein may be recovered, and when collected, must, except in the city of New York, be paid to the county treasurer, and by him credited to the town in the same county, liable to the support of the bastard, or if there be none, to the county. In the city of New York, the court must order the undertaking to be prosecuted by the commissioners of charities and corrections, and when collected it must be paid into the city treasury. In every other county, it must be prosecuted by the district attorney.

The following section of the Code of Civil Procedure relates to the amount to be collected in an action upon a bond:

Prosecution of undertaking, etc.

§ 1915. A bond in a penal sum, executed within or without the state, and containing a condition to the effect, that it is to be void, upon performance of any act, has the same effect, for the purpose of maintaining an action or special proceeding, or two or more successive actions or special proceedings thereupon, as if it contained a covenant to pay the sum, or to perform the act, specified in the condition thereof. But the damages to be recovered for a breach, or successive breaches, of the condition, cannot, in the aggregate, exceed the penal sum, except where the condition is for the payment of money; in which case, they cannot exceed the penal sum, with interest thereupon, from the time when the defendant made default in the performance of the condition.

§ 176. **In whose name undertaking to be prosecuted.**—When an undertaking to obey an order, in relation to the support of a bastard, or of a child likely to be born a bastard, or of its mother, is forfeited, it may be prosecuted in the name of the county superintendents of the county, or the overseers of the poor of the town, which was liable for the support of the bastard, or which may have incurred any expense in the support of the bastard, or of its mother, during her confinement or recovery; or in the city of New York, in the name of the corporation of that city.

The action by this section is expressly to be brought by the superintendent or overseer of the poor, and it, therefore falls within the exception of section 1984 of the Code of Civil Procedure, and the general rule laid down in such section does not apply.

Tillotson v. Martin, 40 Hun, 316.

In an action on the undertaking under this section, an order of filiation is conclusive, unless it has been appealed from, and an undertaking given as provided in subdivision 2 of section 851, *ante*. The order of filiation is equivalent to a judgment that the defendant should pay the weekly sum mentioned therein. It rests with the defendant to show himself exonerated from the payment in order to avoid the recovery against him.

Walls worth v. Mead, 9 Johns. 367.

§ 177. **Evidence in the action and measure of damages.**—In the action mentioned in the last section, it is not necessary to prove the actual payment of money by a county superintendent, overseer of the poor, officer of an alms-house, or other person; but the neglect to pay a sum ordered to be paid by competent authority, for the support of the bastard, or of its mother, is a breach of the undertaking, and the measure of the damages is the sum ordered to be paid, and which was withheld at the time of the commencement of the action, with interest thereon.

This action is legislative declaration of the principle as to measure of damages laid down in the cases of Wallsworth v. Mead, 9 Johns. 367; Rockefeller v. Donnelly, 8 Cow. 623; People v. Corbett, 8 Wend. 520; People v. Haddock, 12 id. 475. In view of the provisions of this section the plea of *non damnificatus* would be no answer in an action upon undertakings in

New action brought, costs, etc.

bastardy proceedings. The sum ordered to be paid and not the sum paid for the support of a bastard child is the measure of damages.

Upon this question and as to the justice of the application of this rule see *Gilbert v. Wiman*, 1 N. Y. 554.

§ 178. **For a subsequent breach of the undertaking, new action may be brought.**—For a breach of the undertaking, after the recovery of damages or the commencement of an action, another action may, in the same manner, be brought. The money collected upon the undertaking must be paid, and credited, in the manner provided in section 881.

§ 179. **Costs, how recovered, when awarded against the plaintiff.**—If, in the action, costs be awarded against the plaintiffs, they may be recovered, as follows:

1. If against the corporation of the city of New York, in the same manner as in any other action;

2. If against county superintendents or overseers of the poor, they must, upon the delivery of a transcript of the judgment, be paid by the county treasurer, and by him charged to the town in the same county, liable for the support of the bastard, or if there be none, to the county.

§ 180. **Action may be maintained on the order, etc.**—An action may be maintained by the parties authorized by section 882, upon an order made by two magistrates, or a county court, for the payment of a sum weekly or otherwise, for the support of the bastard or its mother, notwithstanding an undertaking may have been given to comply with the order; and in case of the death of the person against whom the order was made, an action may be maintained thereon against his executors or administrators. But when an undertaking is given to appear at the next term of the county court, no action can be brought on the order until it is affirmed by the court.

CHAPTER SIX.

INSANE, DEAF, DUMB AND BLIND.

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| §181. Proceedings to determine insanity. | §200. Clothing. |
| §182. Support of poor insane. | §201. Charges against county. |
| §183. Board of claims to fix value of buildings. | §202. Counties, how reimbursed. |
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§ 181. **Proceedings to determine the question of insanity.**— Any person with whom an alleged insane person may reside or at whose he may be, or the father or mother, husband or wife, brother or sister, or the child of any such person, and any overseer of the poor of the town, and superintendent of the poor of the county in which any such person may be, may apply for such order, by presenting a verified petition containing a statement of the facts upon which the allegation of insanity is based, and because of which the application for the order is made. Such petition shall be accompanied by the certificate of lunacy of the medical examiners, as prescribed in the preceding section. Notice of such application shall be served personally, at least one day before making such application, upon the person alleged to be insane, and if made by an overseer or superintendent of the poor, also upon the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such

Proceedings to determine question of insanity.

alleged insane person may reside, or at whose house he may be. The judge to whom the application is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him. He shall state in a certificate to be attached to the petition his reason for dispensing with personal service of such notice, and if substituted service is directed, the name of the person to be served therewith. The judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue an order for the commitment of such person to an institution for the custody and treatment of the insane. If, however, it appears that such insane person is harmless and his relatives or a committee of his person are willing and able to properly care for him, at some place other than such institution, upon their written consent, the judge may order that he be placed in the care and custody of such relatives or such committee. Such judge may, in his discretion, require other proofs in addition to the petition and certificate of the medical examiners. Upon the demand of any relative or near friend in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day, or upon such other day to which the proceeding shall be regularly adjourned, he shall hear the testimony introduced by the parties and examine the alleged insane person if deemed advisable, in or out of court, and render a decision in writing as to such person's insanity. If it be determined that such person is insane, the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane, or make such other order as is provided in this section. If such judge can not hear the application he may, in his order directing the hearing, name some referee, who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If the commitment be made to a state hospital, the order shall be accompanied by a written statement of the judge as to the finan-

Proceedings to determine question of sanity.

cial condition of the insane person and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of such state hospital shall be immediately notified of such commitment, and he shall, at once, make provisions for the transfer of such insane person to such hospital. The petition of the applicant, the certificate in lunacy of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee, and the order of commitment shall be presented at the time of the commitment to the superintendent or person in charge of the institution to which the insane person is committed and verbatim copies shall be forwarded by such superintendent or person in charge and filed in the office of the state commission in lunacy. The relative, or committee, to whose care and custody any insane person is committed, shall forthwith file the petition, certificate and order, in the office of the clerk of the county where such order is made, and transmit a certified copy of such papers, to the commission in lunacy, and procure and retain another such certified copy. The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person upon any such order, if the papers required to be presented shall not comply with the provisions of this section, or if in his judgment, such person is not insane within the meaning of this statute, or if received, such person may be discharged by the commission. No person shall be admitted to any such institution under such order after the expiration of five days from and inclusive of the date thereof. Notwithstanding the requirements of this section that an alleged insane person be duly committed by an order of the court, in a case where the condition of such person is such that it would be for his benefit to receive immediate care and treatment, or if he is dangerously insane so as to render it necessary for public safety that he be immediately confined, he shall be forthwith received by a state institution authorized by law to care for the insane. In such case such insane person shall be so received by such institution upon a certificate of lunacy, executed by two medical examiners in lunacy after the examination and in the manner provided in the preceding section, and upon a petition made by the person authorized by this section to apply to a court for an order of commitment. By virtue of such certificate of lunacy and such petition such insane person may be retained

Liability for care of poor, etc.

in such institution for a period not to exceed five days. Prior to the expiration of such time an order for his commitment must be obtained in the manner provided by this section. The certificate of lunacy executed by such physicians must contain adequate reasons why the insane person should be immediately received in an institution for the insane for treatment. The superintendent or person in charge of any such institution may refuse to receive such insane person upon such certificate and petition, if in his judgment the reasons stated in the certificate, or the condition of the patient, are not sufficient, or is not of such character, as to make it necessary that the patient should receive immediate treatment.

Insanity Law, § 62, as am'd by Laws 1903, chap. 146.

§ 182. **Liability for care and support of poor and indigent insane.**—All poor and indigent insane persons not in confinement under criminal proceedings, shall, without unnecessary delay, be transferred to a state hospital and there wholly supported by the state. The costs necessarily incurred in the transfer of patients to state hospitals shall be a charge upon the state. The commission shall secure from the patient's estate and from relatives or friends who are liable or may be willing to assume the cost of support of inmates of state hospitals supported by the state, reimbursement, in whole or in part of the money thus expended, either directly or through the treasurers of the respective hospitals, as provided in section forty-two of this act. The commission may appoint agents, whose duty it shall be to secure from relatives and friends who are liable therefor, or who may be willing to assume the cost of support of any of the inmates of state hospitals as are being supported by the state, reimbursement in whole or in part of the money so expended. The compensation of each agent shall not exceed five dollars a day, and the necessary traveling and other incidental expenses incurred by him, to be approved by the comptroller. The commission may fix a rate to be paid for the support of inmates of state hospitals by relatives liable for such support or by those not liable for such support, but willing to assume the cost thereof; but such rate shall be sufficient to cover a proper proportion of the cost of maintenance and of necessary repairs and improvements. The maintenance of any inmate of a state hospital committed thereto upon a court order arising out of any criminal action or proceeding

Buildings taken, appraisal of lands.

shall be paid by the county from which such inmate was committed. (As amended by chap. 380 of 1900 and chap. 546 of 1901.)

Insanity Law, § 65.

§ 183. **Board of claims to fix value of certain buildings taken.**—The board of supervisors of any county owning a building or buildings which were used solely as a county insane asylum for a period of not more than fifteen years immediately prior to the time of the transfer to the state of the care of the insane of such county, pursuant to chapter one hundred and twenty-six of the laws of eighteen hundred and ninety and the acts amendatory thereof and supplemental thereto, and which asylum has not been purchased by or transferred to the state in pursuance of law, may, within two years after this act takes effect, present to the state board of claims a claim for the value of such building or buildings at the time of the actual transfer to the state of the insane of such county. Jurisdiction is hereby conferred upon the state board of claims to hear, audit and determine such claim, and award to the county the amount to which such board may deem it justly entitled. In estimating such amount, the board of claims shall determine the value of such building or buildings at the time of such transfer of the insane, but may also take into account the use to which such building or buildings have been put by the county since such time, their availability for county purposes other than the care of the insane and the probability of their use for such purposes by the county in the future.

Laws 1896, chap. 481.

§ 184. **Commission for appraisal of value of lands, etc.**—In any case where a county, other than New York, Kings or Monroe has erected a building or buildings to be used solely as a county asylum for the insane, or has purchased real estate for the purpose of erecting such a building and has been permitted to so use the same either by act of the legislature or authorization from the State board of charities, the value of said real estate, or of said building or buildings and the land upon which it or they stand, shall be appraised by a commission to consist of the comptroller, the State engineer and surveyor and the president of the State board of charities who are hereby created a commission for that purpose, and the comptroller is hereby authorized and di-

Costs of commitment; duties, etc.

rected, subject to the approval of the legislature, to accept the title to the same on behalf of the State in case the board of supervisors of the county elects to sell the same to the State at such appraised value.

Laws 1890, chap. 461, § 1.

§ 185. **Costs of commitment.**—The costs necessarily incurred in determining the question of the insanity of a poor or indigent or other person under this act, or under section twenty-six, chapter four hundred and forty-six of the laws of eighteen hundred and seventy-four, including the fees allowed by the judge or justice ordering the commitment to the medical examiners or medical examiners or medical witnesses called by him and other necessary expenses, and in securing the admission of such person into a state hospital and the expense of providing proper clothing for such person in accordance with the rules and regulations adopted by the commission, shall be a charge upon the town, city or county securing the commitment; but in the city of New York all fees of medical examiners and medical witnesses appointed or called by a judge of any court in said city for the purpose of determining the question of the insanity of any such person, and not heretofore paid, may be audited and allowed in the first instance either by the judge or justice appointing the medical examiners or by the comptroller of said city and shall be paid by the chamberlain of said city on the warrant of the comptroller from the court fund and charged to the proper county within said city; if the person sought to be committed is not a poor or indigent person, the costs and expenses of the proceeding to determine his insanity and secure his commitment paid by any town, city or county may be collected by it from the estate of such person, or from the persons legally liable for his maintenance, and the same shall be a charge upon the estate of such person, or the same shall be paid by the persons legally liable for his maintenance.

Insanity Law, § 64, as am'd Laws 1904, chap. 428.

§ 186. **Duties of local officers in regard to their insane.**—All county superintendents of the poor, overseers of the poor and other city, town or county authorities, having duties to perform relating to the insane poor, are charged with the duty of seeing that all poor and indigent insane persons within their respective

Expense of female attendant.

municipalities, are timely granted the necessary relief conferred by this chapter, and, when so ordered by a judge, as herein provided, or by the commission, shall see that they are, without unnecessary delay, transferred to the proper institutions provided for their care and treatment as the wards of the state. Before sending a person to any such institution, they shall see that he is in a state of bodily cleanliness and comfortably clothed with suitable or new clothing, in accordance with the regulations prescribed by the commission. The commission may, by order, direct that any person it deems unsuitable therefor shall not be so employed or act as such attendant. Each patient shall be sent to the state hospital, within the district embracing the county from which he is committed, except that the commission may, in their discretion, direct otherwise, but private or public insane patients, for whom homeopathic care and treatment may be desired by their relatives, friends or guardians, may be committed to the Middletown State Homeopathic hospital, or the Gowanda State Homeopathic hospital, from any of the counties of the state, in the discretion of the judge granting the order of commitment; and the hospital to which any patient is ordered to be sent shall, by and under the regulations made by such commission, send a trained attendant to bring the patient to the hospital. Each female committed to any institution for the insane shall be accompanied by a female attendant, unless accompanied by her father, brother, husband, or son. After the patient has been delivered to the proper officers of the hospital, the care and custody of the municipality from which he is sent shall cease.

Insanity Law, § 67, as am'd by Laws 1899, chap. 481; Laws 1903, chap. 146.

§ 187. **Expenses of female attendant a county charge.**—It is provided that every insane or feeble-minded female committed to an asylum shall have at least one woman attendant while in custody and in going to the asylum. The expenses of such attendant is a charge upon the city or county from which such insane or feeble-minded person was committed.

She shall also be attended while transferring from one institution to another or from any hospital or public institution to a point outside of the city, village or town where said hospital or institution is located.

Laws 1890, chap. 40, §§ 1, 2, 3.

Transfer of insane convicts.

§ 188. **Transfer of insane convicts to the Matteawan State Hospital.**—Whenever the physician of the State prison for women, any county penitentiary or workhouse, any reformatory for women, or of the state reformatory or any other penal institutions shall report in writing to the warden or other officer in charge thereof, that any person undergoing a sentence of one year or less or convicted of a misdemeanor, or any female convict confined therein is, in his opinion, insane, such warden or other officer shall apply to a judge of a court of record to cause an examination to be made of such person by two legally qualified examiners in lunacy, other than a physician connected with such state prison, penitentiary, reformatory or penal institution. Such examiners shall be designated by the judge to whom the application is made. Such examiners if satisfied, after a personal examination, that such convict is insane, shall make a certificate to such effect in the form and manner prescribed by this chapter for the commitment of insane persons to state hospitals. Such warden or other person in charge shall apply to a judge of a court of record for an order transferring such convict to the Matteawan state hospital, accompanying such application with such certificate in lunacy. Such judge, if satisfied that such convict is insane, shall issue such order of transfer, and such warden or other officer in charge shall thereupon cause such convict to be transferred to the Matteawan state hospital and delivered to the medical superintendent thereof. At the time of such transfer, the certificate in lunacy and order of transfer shall be presented to such medical superintendent. Such insane convict shall be received into such hospital and retained there until legally discharged. Such warden, or other officer in charge, before transferring such insane convict, shall see that he is bodily clean and is provided with a new suit of clothing similar to that furnished to convicts on their discharge from prison. The costs necessarily incurred in determining the question of insanity, including the fees of the medical examiners, shall be a charge upon the state or the municipality at whose expense the institution from which the transfer is made or sought to be made is maintained.

Insanity Law, § 97, as am'd by Laws of 1904, chap. 525.

§ 189. **Transfers from State hospitals to Matteawan State Hospital.**—The commission may, by order in writing, transfer to the

Duties of certain officers, etc.

Matteawan state hospital, any insane inmate of a state hospital committed thereto upon the order of a court of criminal jurisdiction or of a judge or justice of such a court; or any patient who has previously been sentenced to a term of imprisonment in any penal institution, and who still manifests criminal tendencies or any such patient who has previously been an inmate of the Matteawan state hospital. From and after October first, nineteen hundred and four, all persons then inmates of the Matteawan state hospital, and all persons thereafter committed to its custody, shall be a charge upon the state.

Insanity Law, § 101, as am'd Laws 1904, chap. 525.

§ 190. **Duty of certain officers to apply, etc.**—Where the incompetent person has property, which may be endangered in consequence of his incompetency, and no relative or other person applies for the appointment of a committee of his property, the overseer or superintendent of the poor of the town, district, county, or city, in which he resides, or, where there is no such officer, the officer or officers performing corresponding functions under another official title, must apply to the proper court, for the appointment of such a committee. The expenses of conducting the proceedings thereupon must be audited and allowed, in the same manner as other official expenses of those officers are audited and allowed.

Code Civ. Proc., § 2324.

§ 191. **Appointment of commission — their proceedings.**—When a defendant pleads insanity, as prescribed in section three hundred and thirty-six, the court in which the indictment is pending, instead of proceeding with the trial of the indictment, may appoint a commission of not more than three disinterested persons to examine him and report to the court as to his sanity at the time of the commission of the crime.

If a defendant in confinement, under indictment, appears to be, at any time before or after conviction, insane, the court in which the indictment is pending, unless the defendant is under sentence of death, may appoint a like commission to examine him and report to the court as to his sanity at the time of the examination.

The commission must summarily proceed to make their examination. Before commencing they must take the oath prescribed

Committed to state asylum, etc.

in the Code of Civil Procedure to be taken by referee. They must be attended by the district attorney of the county, and may call and examine witnesses and compel their attendance. The counsel of the defendant may take part in the proceedings. When the commissioners have concluded their examination they must forthwith report the facts to the court with their opinion thereon.

§ 192. **If found insane, trial or judgment suspended, and defendant to be committed to State lunatic asylum, if his discharge be dangerous to the public peace or safety.**— If the commission find the defendant insane, the trial or judgment must be suspended until he becomes sane; and the court, if it deem his discharge dangerous to the public peace or safety, must order that he be, in the mean time, committed by the sheriff to a state lunatic asylum; and that upon his becoming sane, he be re-delivered by the superintendent of the asylum to the sheriff.

§ 193. **If defendant committed, bail exonerated or deposit of money refunded.**— The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitled a person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

§ 194. **Detention of defendant in asylum, and proceedings on his becoming sane.**— If the defendant be received into the asylum, he must be detained there until he becomes sane. When he becomes sane, the superintendent must give a written notice of that fact to a judge of the supreme court of the district in which the asylum is situated. The judge must require the sheriff without delay to bring the defendant from the asylum and place him in the proper custody until he be brought to trial, judgment, or execution as the case may be, or be legally discharged.

§ 195. **Expenses incident to sending defendant to asylum, how paid.**— The expenses of sending the defendant to asylum, of keeping him there, and of bringing him back, are, in the first instance, chargeable to the county from which he was sent; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county, bound to provide for and maintain him elsewhere.

Costs of commission, etc.

The cost of any commission of lunacy, pursuant to the provisions of this article, shall be a charge upon the county in which the commission shall have been executed. The commissioners are entitled to such compensation for their services as the court may direct.

Code of Crim. Proc., §§ 658-662a.

§ 196. **Costs of commission.**—The costs of any commission of lunacy appointed pursuant to the provisions of this article shall be a charge upon the county in which the same shall have been executed; and the certificate of the court by which such commission shall have been appointed shall constitute a legal voucher thereof in the hands of the county treasurer. Provided, nevertheless, that the costs of all commissions appointed by the governor shall be defrayed from the fund appropriated for the contingent expenses of the executive department.

Laws 1874, chap. 446, tit. 1, art. 2, § 22, as am'd by chap. 574, Laws 1875, § 2.

§ 197. **Inquiry by judge and proceedings as to criminal prisoners, etc.**—If any person in confinement under indictment or under sentence of imprisonment, or under a criminal charge, or for want of bail for good behavior, or for keeping the peace, or for appearing as a witness, or in consequence of any summary conviction, or by order of any justice, or under any other than civil process, shall appear to be insane, the county judge of the county where he is confined shall institute a careful investigation, call two legally qualified examiners in lunacy, neither of whom shall be a physician connected with the institution in which such person, so to be examined, is confined, and other credible witnesses, invite the district attorney to aid in the examination, and if he deem it necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors, and if it be satisfactorily proved that he is insane, said judge may discharge him from imprisonment and order his safe custody and removal to a State asylum, where he shall remain until restored to his right mind, and then the superintendent shall inform the said judge and district attorney so that the person so confined may, within sixty days thereafter, be remanded to prison and criminal proceedings resumed or otherwise discharged, or if the period of his imprisonment shall have expired, he shall be discharged. When such person is sent to an asylum, the county from which he is sent shall

Admission of pupil, etc.

defray all his expenses while there, and of sending him back if returned, but the county may recover the amount so paid from his own estate, if he have any, or from any relative, town, city or county that would have been bound to provide for and maintain him elsewhere. The fees of the medical examiners called as witnesses, and the other necessary expenses for such investigation shall be audited and allowed at a reasonable sum by said judge, and upon the presentation of the order made by him, such fees and expenses shall be paid by the county treasurer of the county where such person is confined, as a county charge. The commission in lunacy may, by order in writing, transfer any insane inmate of a State hospital, committed thereto upon the order of a court of criminal jurisdiction, or of a judge or justice of such a court, to the Matteawan State Hospital, and the county in which the criminal charge arose, or conviction or acquittal was had, shall defray all the expenses of such person while at the Matteawan State Hospital and the expenses of returning him to such county.

Laws 1874, chap. 446, tit. 1, art. 2, § 26, as am'd by chap. 451, Laws of 1897; as am'd by chap. 417, Laws of 1898.

§ 198. **Admission of pupil — when county charge.**—The persons who shall be entitled to the benefits of this institution shall be admitted in the order of their application for admission, except that the blind children of those who shall have died in the military service of the United States, or from wounds or injuries received therein during the present rebellion, shall in all cases have a preference; except, however, that each county shall be entitled to admission for its blind population in indigent circumstances in the same proportion which the whole number of its blind population shall bear to the whole blind population of the State, which proportion shall be determined by the trustees; provided, however, that for each person sent to any county, such county shall pay the annual sum of fifty dollars toward the support of such person.

Laws 1865, chap. 587, § 12; 1 R. S. 286.

The above applies to the Batavia school. Application is made to a justice of the supreme court or the county judge of the county where applicant resides.

Id., § 11.

§ 199. **Applications to New York State Institution for the Blind.**—Applications for admission into the institution shall be

Clothing, etc.

made to the board of trustees in such a manner as they may direct, but the board shall require such application to be accompanied by a certificate from the county judge or county clerk of the county, or the supervisor or town clerk of the town, or the mayor of the city where the applicant resides, setting forth that the applicant is a legal resident of the town, county and State claimed as his or her residence.

Laws 1867, chap. 744, § 3; 1 R. S. 287.

§ 200. **Clothing, burial expenses, etc.**— If the friends of any pupil from within the State of New York shall fail through neglect or inability to provide the same with proper clothing or with funds to defray his or her necessary traveling expenses to and from the institution, or to remove him or her therefrom, as required in the preceding section, the trustees shall furnish such clothing, pay such traveling expenses, or remove such pupil to the care of the overseers of the poor of his or her township, and charge the cost of the same to the county to which the pupil belongs, provided that the annual amount of such expenditures on account of any one pupil shall not exceed the sum of sixty dollars. And in case of the death of any pupil at the institution, whose remains shall not be removed or funeral expenses borne by the friends thereof, the trustees shall defray the necessary burial expenses, and charge the same to his or her county as aforesaid. Upon the completion of their course of training in the industrial department, the trustees may furnish to such worthy poor pupils as may need it, an outfit of machinery and tools for commencing business, at a cost not exceeding seventy-five dollars each. and charge the same to the proper county, as aforesaid.

Laws 1867, chap. 744; 1 R. S. 288.

§ 201. **Charges against county.**— On the first day of October in each year, the trustees shall cause to be made out against the respective counties concerned, itemized accounts, separate in each case, of the expenditures authorized by the preceding section of this act, and forward the same to the board of supervisors chargeable with the account. The board shall thereupon direct the county treasurer to pay the amount so charged to the treasurer of the institution for the blind, on or before the first day of March next ensuing.

1867 chap. 744, § 15.

Counties, how reimbursed, etc.

§ 202. **Counties, how reimbursed.**—The counties against which the said accounts shall be made out as aforesaid, shall cause their respective treasurers, in the name of their respective counties, to collect the same, by legal process, if necessary, from the parents or estates of the pupils who have the ability to pay, on whose account the said expenditures shall have been made; provided, that at least five hundred dollars' value of the property of such parents or estate shall be exempt from the payment of the accounts aforesaid

Laws 1867, chap. 744, § 16.

§ 203. **State and New York institutions.**—The New York Institution for the Blind shall continue to have the custody, charge, maintenance and education of all such pupils as are now intrusted to them by the State, and of any others who may be appointed prior to the opening of the State institution at Batavia; and shall receive compensation from the State for the maintenance, education and support of said pupils in the same manner as is now, or has heretofore been provided, and shall receive the same amount *per capita* from the counties from which said pupils are respectively appointed as is now paid, for their clothing, until such period as the New York State Institution for the Blind shall be ready to receive such pupils, and shall then, without reference to the term of years for which said pupils have been appointed under existing laws, and received by said New York Institution for the Blind, transfer said pupils to said State institution; provided, however, that they shall retain and continue to receive all pupils heretofore appointed or hereafter to be appointed, from the counties of New York and Kings, under the appointment of the superintendent of public instruction, in like manner as is now provided by law, to be received, maintained and educated by the said New York Institution for the Blind, which shall be compensated for their maintenance and education by the State; and for their clothing by the counties from which they are appointed, in like manner as is now done.

Laws 1867, chap. 744, § 22.

§ 204. **Application for admission to New York Institution for the Blind.**—Application for admission into the institution shall be made to the board of managers, and each application shall set forth the age,* the fact of blindness, and that the applicant is a legal resident of the town, county and State claimed as his or

Clothing, etc.

her residence, with such other information as the board may require; and each application shall be sworn to by the applicant, or his or her parents or guardian, and shall be signed by at least one member of the board of supervisors of the county in which the applicant may reside, and also be recommended by the president and superintendent of the said institution, and transmitted by the said institution to the superintendent of public instruction.

Laws 1870, chap. 166, § 2.

§ 205. **Clothing and support of State pupils.**—The supervisors of the county * of New York or Kings, Queens and Suffolk, from which State pupils shall be sent to and received in the said institution, whose parents or guardians shall, in the opinion of the superintendent of public instruction, be unable to furnish them with suitable clothing, are hereby authorized and directed, in every year while such pupils are in said institution, to raise and appropriate fifty dollars for each of said pupils from said counties respectively, and to pay the sum so raised to the said institution, to be by it applied to furnishing such pupils with suitable clothing while in said institution.

Laws 1870, chap. 166, §§ 2, 3.

§ 206. **Clothing for indigent pupils, etc.**—The supervisors of any county in this State from which State pupils shall be sent to and received in the said institution, whose parents or guardians shall, in the opinion of the superintendent of public instruction, be unable to furnish them with suitable clothing are hereby authorized and directed, in every year while such pupils are in said institution, to raise and appropriate thirty dollars for each of said pupils, and to pay the sum so raised to the said institution, to be by it applied to furnishing such pupils with suitable clothing while in said institution. And if in any case all or any of said moneys are not expended before the expiration of the periods of appointment of such pupils, then the unexpended residue shall go into the general clothing fund of the said institution, to be by it devoted to furnishing State pupils with suitable clothing. If said sums shall not be paid to the said institution within six months after the annual meeting of the supervisors of any of said counties, the sums so unpaid shall bear interest at the rate of seven per centum per annum, from the expiration of said six months until the same be paid. The supervisors of any county in this State from whose pauper institutions pupils shall be sent

Indigent deaf-mutes.

to the said institution for the blind, shall raise, appropriate and pay to the order of the comptroller of the State, toward the expense of educating and clothing such pupils, a sum equal to that which the county would have to pay to support the pupils as paupers at home.

Laws 1839, chap. 200, § 5; 1 R. S. 291.

§ 207. **Indigent deaf-mutes, where sent.**—Whenever a deaf-mute child, under the age of twelve years, shall become a charge for its maintenance on any of the towns or counties of this State, or shall be liable to become such charge, it shall be the duty of the overseers of the poor of the town, or of the supervisors of such county, to place such child in the New York Institution for the Deaf and Dumb, or in the Institution for the Improved Instruction of Deaf-Mutes or in the Le Couteulx St. Mary's Institution for the Improved Instruction of Deaf-Mutes in the city of Buffalo, or in the Central New York Institution for Deaf-Mutes in the city of Rome, or in any institution of the State for the education of deaf-mutes.

Laws of 1863, chap. 325, as am'd by chap. 213, Laws of 1875.

§ 208. **Application of parents, etc — Duty of overseers.**—Any parent, guardian or friend of a deaf-mute child, within this State, over the age of five years and under the age of twelve years, may make application to the overseer of the poor of any town or to any supervisor of the county where such child may be, showing by satisfactory affidavit or other proof, that the health, morals or comfort of such child may be endangered, or not properly cared for, and thereupon it shall be the duty of such overseer or supervisor to place such child in the New York Institution for the Deaf and Dumb, or in the Institution for the Improved Instruction of Deaf-Mutes, or in the Le Couteulx Saint Mary's Institution for the Improved Instruction of Deaf-Mutes in the city of Buffalo, or in the Central New York Institution for Deaf-Mutes in the city of Rome, or in the Albany Home School for the Oral Instruction of the Deaf at Albany, or in any institution in the State, for the education of deaf-mutes, as to which the board of State charities shall have made and filed with the superintendent of public instruction a certificate to the effect that said institution has been duly organized and is prepared for the reception and instruction of such pupils.

Laws 1863, chap. 325, § 2, as am'd by chap. 36, Laws 1892.

Expense of indigent deaf-mutes, etc.

§ 209. **Expense a county charge.**— The children placed in said institutions, in pursuance of the foregoing sections, shall be maintained therein at the expense of the county from whence they came, provided that such expense shall not exceed three hundred dollars each per year, until they attain the age of twelve years, unless the directors of the institution to which a child has been sent shall find that such child is not a proper subject to remain in said institution.

Laws 1863, chap. 325, § 3, as am'd by chap. 213, Laws 1875.

§ 210. **Same, to be raised by tax.**— The expenses for the board, tuition and clothing for such deaf-mute children, placed as aforesaid in such institutions, not exceeding the amount of three hundred dollars per year, above allowed, shall be raised and collected as are other expenses of the county from which such children shall be received; and the bills therefor, properly authenticated by the principal or one of the officers of the institution, shall be paid to said institution by the said county; and its county treasurer or chamberlain, as the case may be, is hereby directed to pay the same on presentation, so that the amount thereof may be borne by the proper county.

Laws 1863, chap. 325, § 4.

§ 211. **Institution for improved instruction — Expenses.**— All provisions of law now existing, fixing the expense of the board, tuition and clothing of children under twelve years placed in the New York Institution for the Instruction of the Deaf and Dumb, shall apply to children who may, from time to time, be placed in the said institution for the improved instruction of deaf-mutes, in the same manner, and with the like effect, as if said last-mentioned institution had also originally been named in the acts fixing such compensation, and as if said acts had provided for the payment thereof to the institution last mentioned, and the bills therefor properly authenticated by the principal or one of the officers of the said last-mentioned institution shall be paid to said institution by the counties respectively from which such children were severally received, and the county treasurer or chamberlain, as the case may be, is hereby directed to pay the same on presentation, so that the amount thereof may be borne by the proper county.

Laws 1870, chap. 180, § 2.

Application for admission to institutions, etc.

§ 212. **Extension of prior act.**—Sections nine and ten of title one of an act entitled “An act to revise and consolidate the general acts relating to public instruction,” passed May second, eighteen hundred and sixty-four, are hereby amended so that the same shall extend and apply to the said “Institution for the Improved Instruction of Deaf-Mutes,” and the like manner, and with the like effect, as if said last-mentioned institution, as well as the others therein mentioned, had originally been named in the said sections respectively.

Laws 1870, chap. 180, § 3.

§ 213. **Money for clothing.**—The supervisors of any county in this state from which county state pupils may be hereafter appointed to any institution for the instruction of the deaf and dumb, whose parents or guardians are unable to furnish them with suitable clothing, are hereby authorized and required to raise in each year for this purpose for each such pupil from said county, the sum of thirty dollars.

Consolidated School Law, tit. 15, art. 14, § 43a, added by Laws 1903, chap. 223.

§ 214. **Application for admission to institution — Duty of supervisor.**—Any parent, guardian or friend of any deaf-mute child within this State, over the age of six years and under the age of twelve years, may make application to the supervisor of the town or city where such child may be, for a permit or order to place such child in the New York Institution for the Deaf and Dumb or in the Institution for the Improved Instruction of Deaf-Mutes, or in any of the deaf-mute institutions of this State, and it shall be the duty of such supervisor, if in his judgment the means of the child, or the parents or parent of such child, will not enable them to defray the expense in a public institution, to grant such permit or order and to cause said child to be received and placed in such one of the institutions of this State for the education of deaf-mutes, as the said supervisor shall select.

Laws 1874, chap. 253, § 1.

§ 215. **Powers of supervisors and overseers.**—Supervisors of towns and wards and overseers of the poor are hereby authorized to send to the Western New York Institution for Deaf-Mutes, deaf and dumb persons between the ages of six and twelve years, in the same manner and upon the same conditions as such persons may be

Superintendents and overseers to make appointments, etc.

sent to the New York Institution for the Instruction of the Deaf and Dumb, under the provisions of chapter three hundred and twenty-five of the laws of eighteen hundred and sixty-three.

Laws of 1876, chap. 331, § 2.

§ 216. **State pupils at Northern New York Institution.**—The Northern New York Institution for Deaf-Mutes, at Malone, is hereby authorized to receive deaf and dumb persons, between the ages of twelve and twenty-five years, eligible to appointment as state pupils, and who may be appointed to it by the superintendent of public instruction, and the superintendent of public instruction is authorized to make appointments to the aforesaid institution.

Laws of 1884, chap. 275, § 1.

§ 217. **Supervisors and overseers to make appointments — Proviso.**—Supervisors of towns and wards and overseers of the poor are hereby authorized to send to the Northern New York Institution for Deaf-Mutes, deaf and dumb persons between the ages of six and twelve years, under the provisions of chapter three hundred and twenty-five of the laws of eighteen hundred and sixty-three, as amended by chapter two hundred and thirteen of the laws of eighteen hundred and seventy-five. Provided, that before any pupils are sent to said institution the board of State charities shall have made and filed with the superintendent of public instruction a certificate to the effect that said institution has been duly organized and is prepared for the reception and instruction of such pupils.

Laws 1884, chap. 275, § 2.

§ 218. **List of deaf and dumb to be furnished.**—It shall be the duty of the overseers of the poor in each town to furnish the superintendent of common schools with a list of the deaf and dumb persons in their respective towns, so far as they can ascertain them, with such particulars in relation to the condition of each as shall be prescribed by the said superintendent.

Laws of 1832, chap. 223, § 1.

§ 219. **Verification of bills for support of pupils.**—Hereafter any bill for board, lodging, clothing or tuition of pupils, in the aforesaid institution, shall be signed and verified by the principal and steward of said institution, instead of its president and secretary, any existing law to the contrary notwithstanding.

Laws of 1894, chap. 93, § 1; 1 R. S. 833.

Application for admission.

The "institution" referred to is the New York Institution for the Instruction of the Deaf and Dumb.

APPLICATION FOR THE ADMISSION OF COUNTY PUPILS.

To be made to and retained by the supervisor or overseer of the poor.

STATE OF NEW YORK, { ss.:
County of.....,

....., of the town of, in said county, being duly sworn, says that he is the of, a deaf-mute child, residing in said town, and who was born on the day of, 190.., and that, in consequence of the want of education, the health, morals and comfort of said child may be endangered or not properly cared for; and the undersigned hereby makes application for the said child to be placed in the Western New York Institution for Deaf-Mutes, for support and education, pursuant to chapter 325 of the Laws of 1863, as amended by chapter 213 of the Laws of 1875.

Dated, 19..
Subscribed and sworn to, etc.

Signed,

.....

To enable the county treasurer to keep a record of such commitments the supervisor should report to him whenever he makes an order placing any child in such institution.

CERTIFICATE.

The supervisor or overseer of the poor will issue a certificate in the following form to be delivered to the institution.

STATE OF NEW YORK, { ss.:
County of.....,

I have this day selected, of the town of, county of, son (or daughter) of, who was born on the day of, 19.., as a county pupil in the Western New York Institution for Deaf-Mutes, for the term of years, from the day of, 19.., to the day of, 19.., (he being then twelve years of age), to be educated and supported therein during that period, at the expense of the county of, in conformity with the provisions of chapter 325, Laws of 1863, as am'd by chapter 213 of the Laws of 1875.

Dated at, 190..

Of the town of

CHAPTER SEVEN.

SOLDIERS, SAILORS AND VETERANS.

- §220. Relief of soldiers and their families.
- §221. Post to give notice that it assumes charge.
- §222. Poor or indigent soldiers, etc., without families.
- §223. Joint relief committee, etc.
- §224. Burial of soldiers, sailors or marines.
- §225. Headstones to be provided.
- §226. Burial lots in rural cemetery association.
- §227. Purchase and maintenance of burial plots.
- §228. Proceedings for removal of remains of deceased soldiers.
- §229. Soldiers' monument associations.
- §230. Property, erection of monuments.
- §231. Improvement taxes.
- §232. Exemption from taxation.
- §233. Acquisition of lands therefor by town.
- §234. Public monuments in town or county.
- §235. Soldiers' monument.
- §236. Leases of buildings to Grand Army of Republic.
- §237. War records, etc.
- §238. Pay when aiding the civil authority.
- §239. Pay when injured, when a county charge.
- §240. Town not to appropriate moneys for unauthorized military bodies.
- §241. Drafts or volunteers from militia.
- §242. Armories.
- §243. Local armories.
- §244. Expenses of erecting, improving and furnishing armories.
- §245. Acquisition of sites by boards of supervisors.
- §246. Every armory shall be under the control and charge of the ranking line officer, etc.
- §247. Armories, janitors and engineers.
- §248. Laborers.
- §249. Compensation of employes in armories.
- §250. Armories and employes for naval militia.
- §251. Armories for naval militia.
- §252. Armory defined.
- §253. Town board may vote expenses to observe Decoration day.
- §254. Same where two towns join.
- §255. Leave of absence to veterans to participate in exercises.
- §256. Pensions — Property purchased with exempt from taxation.

§ 220. **Relief of soldiers and their families.**—No poor or indigent soldier, sailor or marine who has served in the military or naval service of the United States, nor his family nor the families of any who may be deceased, shall be sent to any almshouse, but shall be relieved and provided for at their homes in the city or town where they may reside, so far as practicable, provided such soldier, sailor or marine or the families of those deceased, are, and have been residents of the State for one year and the proper auditing board of such city or town in those counties where the poor are a county charge, the superintendent, if but one, or superintendents of the poor, as such auditing board in those counties

Post to give notice.

shall provide such sum or sums of money as may be necessary to be drawn upon by the commander and quartermaster of any post of the Grand Army of the Republic of the city or town, made upon the written recommendation of the relief committee of such post; or if there be no post in a town or city in which it is necessary that such relief should be granted, upon the like request of the commander and quartermaster and recommendation of the relief committee of a Grand Army post located in the nearest town or city, to the town or city requested to so furnish relief, and such written request and recommendation shall be a sufficient authority for the expenditures so made.

Poor Law, § 80, as am'd by chap. 475, Laws of 1900.

Under the act of 1887, chap. 706, of Laws 1887, as amended by chap. 261, Laws 1888, the court held in *People v. City of Rome*, 136 N. Y. 489, that the power to determine who are indigent persons or the necessity for their relief, and the measure thereof, etc., is not vested exclusively in the relief committee of the Grand Army, but in the proper officers of the town, city or county having power to raise and appropriate moneys for relief of the poor or that such officers must exercise their discretion and judgment as to the amount to be appropriated.

The act of 1887 was repealed in 1896, and now the relief committee of the Grand Army is given the power to determine who are and the manner in which indigent veterans are to be assisted.

§ 221. **Post to give notice that it assumes charge.**—The commander of any such post which shall undertake to supervise relief of poor veterans or their families, as herein provided, before his acts shall become operative in any town, city or county, shall file with the clerk of such town, city or county, a notice that such post intends to undertake such supervision of relief, which notice shall contain the names of the relief committee, commander and other officers of the post; and also an undertaking to such city, town or county, with sufficient and satisfactory sureties for the faithful and honest discharge of his duties under this article; such undertaking to be approved by the treasurer of the city or county, or the supervisor of the town, from which such relief is to be received. Such commander shall annually thereafter, during the month of October, file a similar notice with said city or town clerk, with a detailed statement of the amount of relief requested by him during the preceding year, with the names of all persons for whom such relief shall have been requested, together with a brief statement in each case, from the relief committee, upon whose recommendation the relief was requested, provided, however, that in cities of the first class said notice and said detailed statement shall

Post to give notice.

be filed with the comptroller of such city, and said undertaking shall be approved by him, and provided further that in any city of the first class which is now or may hereafter be divided into boroughs, a duplicate of such notice and of such detailed statement shall be filed with the commissioner of charities for the borough in which the headquarters of such post is situated, and it shall be the duty of such commissioner to annually include in his estimate of the amount necessary for the support of his department such sum or sums of money as may be necessary to carry into effect the provisions of sections eighty, eighty-one, eighty-two, eighty-three and eighty-four of this act and the proper officers charged with the duty of making the budget of any such city shall annually include therein such sum or sums of money as may be necessary for that purpose. Moneys actually laid out and expended by any such post for the relief specified in section eighty of this act shall be reimbursed quarterly to such post by the comptroller on vouchers duly certified by the commander and quartermaster of said post, showing the date and amount of each payment, the certificate of the post relief committee, signed by at least three members, none of whom shall have received any of the relief granted by the post for which reimbursement is asked, showing that the person relieved was an actual resident of such city, and that they recommended each payment, and the receipt of the recipient for each payment, or in case such receipt could not be obtained, a statement of such fact, with the reason why such receipt could not be obtained. Such vouchers shall be made in duplicate on blanks to be supplied by the comptroller and shall be presented to the commissioner of charities for the borough in which the headquarters of the post is situated, and if such commissioner is satisfied that such moneys have been actually expended as in said voucher stated, he shall approve the same, and file one of said duplicates in his office and forward the other to the comptroller, who shall pay the same by a warrant drawn to the order of the said commander. And provided further, that in any city, county or borough in which Grand Army posts have organized or may organize a memorial and executive committee, the latter shall be regarded as a post of the Grand Army of the Republic. And the chairman, treasurer or almoner and bureau of relief or relief committee referred to, shall exercise the same privileges and powers as the commander, quartermaster and relief committee of a post, on complying with the requirements of this

Poor soldiers; joint relief committee.

and the preceding section. Wilful false swearing to such voucher shall be deemed perjury and shall be punishable as such.

Within thirty days after the passage of this act, any memorial and executive committee in any city, county or borough may file with the proper officers the notice mentioned in the preceding section and such officers are hereby empowered and it is hereby made their duty to estimate for, provide and raise, in the same manner as other local expenditures are estimated for, provided and raised, such sum or sums of money as may be necessary to carry into effect the provisions of this act during the year eighteen hundred and ninety-nine, and such bureau of relief or relief committee shall be reimbursed for moneys expended by it upon compliance with the terms of this act.

Poor Law, § 81, as am'd by chap. 462, Laws of 1899.

As to post relief committees in cities where there are more than one post of Grand Army, see

Laws 1887, chap. 706. § 6, am'd Laws 1896, chap. 598.

§ 222. **Poor or indigent soldiers, etc., without families.**—Poor or indigent soldiers, sailors or marines provided for in this article, who are not insane, and who have no families or friends with whom they may be domiciled, may be sent to a soldiers' home. Any poor or indigent soldier, sailor or marine provided for in this chapter, or any member of the family of any living or deceased soldier, sailor or marine, who may be insane, shall upon recommendation of the commander and relief committee of such post of the Grand Army of the Republic, within the jurisdiction of which the case may occur, be sent to the proper State hospital for the insane.

Poor Law, § 82; 2 R. S. 2313.

As to committing insane person to state hospital, see

Insanity Law, §§ 60-64.

§ 223. **Joint relief committee, etc.**—In all cities of this State containing less than one hundred thousand inhabitants, where there are more than one post of the Grand Army of the Republic, there shall be appointed and constituted a joint relief committee, consisting of one member from each post, of the Grand Army of the Republic in said city, which shall have complied with the provisions of law as hereinafter provided, to be chosen in such manner as such post shall direct, and one member appointed by the auditing board of said city, to which all orders for relief drawn by the commander or quartermaster of any post of the Grand

Burial.

Army of the Republic in said city or town, shall be referred; and no relief shall be furnished under the provisions of this act, except upon the approval and recommendation of said committee or a majority of the members thereof. No post of the Grand Army of the Republic shall be entitled to membership in said committee unless such post shall have complied with the provisions of sections three and four of this act, and in case such post shall fail to so comply with the provisions of said sections and to select a member of said committee the commander or quartermaster shall not be entitled to draw upon the fund provided by the auditing board of said city as provided in section one of this act.

Laws of 1887, chap. 706, § 6, added by chap. 598, Laws of 1896; 2 R. S. 2314.

§ 224. **Burial of soldiers, sailors or marines.**—The board of supervisors in each of the counties shall designate some proper person or authority, other than that designated for the care of poor persons, or the custody of criminals, who shall cause to be interred the body of any honorably discharged soldier, sailor or marine, who has served in military or naval service of the United States, or the body of the wife or widow of any soldier, sailor or marine, married to him previous to eighteen hundred and ninety, who shall die such widow, and who shall hereafter die without leaving sufficient means to defray his or her funeral expenses, but such expenses shall in no case exceed thirty-five dollars. If the deceased has relatives or friends who desire to conduct the burial, but are unable or unwilling to pay the charge therefor, such sum shall be paid by the county treasurer, upon due proof of the claim, and of the death and burial of the soldier, sailor or marine, or of the wife or widow of such soldier, sailor or marine to the person so conducting such burial. Such interment shall not be made in a cemetery or cemetery plot used exclusively for the burial of poor persons deceased.

Poor Law, § 83, as am'd by Laws 1900, chap. 24; Laws 1903, chap. 96.
See also Laws 1898, chap. 411. See also § 937, ante.

STATE OF NEW YORK,)
MONROE COUNTY } ss.:
..... of)
..... being duly sworn, deposes and says that is a resident of the County of Monroe, that was acquainted with widow or wife of, who was an honorably discharged and resided at number street, city or town of in said County of Monroe, at the time of his or her death; that he served in

Headstone.

Co., Regiment, of the United States during the
....., that died at number street, city or town of
....., in the county of, on the day of,
190.., without leaving means sufficient to defray his or her funeral expenses,
and was buried on the day of, 190.., at,
and that (always write the name of party entitled to burial
fees) is entitled to the sum of Thirty-five dollars, as provided in section 1,
chapter 247, of the Laws of 1883. as amended, and section 83, chapter 96,
of the Laws of 1903, relative to widow or wife.

Sworn to before me this.....
day of, 190..

Commissioner of Deeds:
Notary Public.

I, the undersigned, who was appointed by the Board of Supervisors of the County of Monroe, to attend the burial of honorably discharged soldiers for the ward or town of, do hereby certify that I believe the facts set forth in the foregoing affidavit are true.

Commissioner.

I hereby certify, that I have examined the foregoing affidavit and certificate and believe the facts set forth therein are true, and do hereby recommend that the Board of Supervisors pay to (always write name of party entitled to burial fees) the sum of thirty-five dollars, as provided by resolutions adopted by the Board of Supervisors of the County of Monroe, January 22, 1884.

Supervisor of the

Report of Commissioner

Sup..... presented the following report of the commissioner appointed for the burial of honorably discharged deceased soldiers, sailors and marines, for the, which was referred to the committee on burial of deceased soldiers:

To the Honorable, the Board of Supervisors of Monroe County:

Gentlemen:—I have the honor to present the following report, as commissioner for the burial of honorably discharged, deceased soldiers, sailors and marines for the

Respectfully submitted,

Commissioner for the

§ 225. **Headstones to be provided.**—Any interment provided for by the provisions of this act shall not be made in a cemetery, or in any cemetery or plot used exclusively for the burial of the pauper dead. The grave of any such deceased soldier, sailor or ma-

Headstone.

rine, and the grave of any honorably discharged soldier, sailor or marine who served in the army or navy of the United States during the late rebellion, who shall have been heretofore buried in any of the counties of this State, but whose grave is not marked by a suitable headstone, and who died without leaving means to defray the expense of such headstone; and the grave of any honorably discharged soldier, sailor or marine who served in the army or navy of the United States during the revolutionary war, the war of eighteen hundred and twelve, or war with Mexico, and who shall have been heretofore buried in any of the counties of this State, but whose grave is not now marked by a suitable headstone, shall be marked by a headstone containing the name of the deceased, and, if possible, the organization to which he belonged or in which he served; such headstone shall not cost more than fifteen dollars, and shall be of such design and material as shall be approved by the board of supervisors, and the expense of such burial and headstone as above provided for shall be a charge upon and shall be paid by the county in which the said soldier, sailor or marine shall have died; and the board of supervisors or other board or officer vested with like powers, of the county of which such deceased soldier, sailor or marine was a resident at the time of his death, is hereby authorized and directed to audit the account and pay the expense of such burial and headstone in the same manner in which the accounts of such officer as shall be charged with the performance of such duty as above provided shall be audited and paid.

Laws 1898, chap. 411.

FORM OF APPLICATION FOR HEADSTONE.
APPLICATION FOR SOLDIERS' HEADSTONE.

(To be made to committee of supervisors, on approval of town committee.)
Monroe County, ss.:
....., being duly sworn, deposes that
for whose headstone application is hereby made, was an honorably discharged soldier of the civil war; that he died a resident of this county; that he is buried in an unmarked grave; that he did not leave means to provide a headstone, and that his friends are unable or unwilling to erect one.
Subscribed and sworn to before me,
....., 190..
* This clause is to be erased if it is desired that the committee shall conduct the burial.

INSCRIPTION.

Name
Military organization

Burial lots.

Date of death
Aged
To be erected in.....cemetery, town of
P. O. address of person who will direct where it is to be erected.....

The foregoing application is hereby approved.
....., 190..

.....
.....
Town Committee.

To Mr.: The above application and proof being satisfactory, you are hereby authorized and directed to prepare the headstone solicited, in accordance with contract made by you with board of supervisors, and to erect the same, when its approval and acceptance by the committee of the board is indorsed hereon.
....., 190..

.....
.....
Committee of Supervisors.
N. Y., ..., 190..

THE COUNTY OF MONROE,

To, Dr.
For headstone erected in cemetery, at the grave of
....., who was a member of Company,
Regiment
\$15.00

STATE OF NEW YORK,)
Monroe County,) ss.:
..... of

..... of the ward or town of, being
duly sworn, deposes and says, that the foregoing account is correct, and that
the headstone therein referred to was erected by (write
person's name who erected headstone) in pursuance of a resolution adopted
by the board of supervisors of the county of Monroe.

Sworn to before me this.....
day of....., 190..

.....
Commissioner of Deeds.
Notary Public.

I, the undersigned, who was appointed by the Board of Supervisors of the
County of Monroe, to attend to the burial of honorably discharged soldiers,
sailors and marines of the war, for the ward or
town of, do hereby certify that the foregoing account is
correct.

.....
Commissioner.

I hereby approve of the above and recommend the payment to
(write person's name who erected headstone) or order, of the sum of Fifteen
Dollars (\$15.00), as per resolution adopted by the Board of Supervisors of
Monroe County.

.....
Supervisor of the

§ 226. Burial lots in rural cemetery association.—The act
for incorporating rural cemetery associations provides that “any

Burial lots, removal of remains.

city or town in which the lands of such associations are situated and any incorporated village located wholly or in part in such town, may purchase such reasonable number of lots or plots in such proportion of the lands of such association for the interment of strangers and other persons who may die in such town or village under such circumstances that it would be unreasonable to require payment for the privilege of making such interment; and such city, town or village or the county in which such lands are situated may also purchase such other lots or plots as may be proper for the suitable burial of such soldiers as shall be buried at public expense.

Laws 1847, chap. 133, § 4, as am'd by Laws 1891, chap. 382.

This statute was in force until 1895, when it was repealed by Laws 1895, chap. 559, § 147, and is given here solely for the purpose of showing the statute as it existed before said repeal, as many associations are in existence to-day incorporated under its provisions.

§ 227. **Purchase and maintenance of burial plots.**—The town board in each of the towns of this State may upon the application in writing of any veteran soldiers' association in the town, or upon a petition in writing of five or more veteran soldiers in towns where no veteran soldiers' organization exists, purchase or provide a soldier's plot in one or more cemeteries where no burial plots are now owned by soldiers' organizations, in which burial plots deceased soldiers may be interred, and may also provide for the annual care of soldiers' burial plots in cemeteries, at the rate of not to exceed fifty cents for each soldier's grave in such burial plot or plots and the expense shall be included in the town expenses, assessed, levied and collected in the same manner as other town expenses are levied and collected.

Laws 1902, chap. 206, § 1.

§ 228. **Proceedings for removal of remains of deceased soldiers.** Upon a verified petition presented to a judge of a court of record by any soldiers' organization in any town in this State by a majority of its officers, or a majority of any memorial committee in any town where there are two or more veteran soldiers' organizations, or in towns where there are no veteran soldier organization, may upon the petition of five or more veteran soldiers, the judge to whom said verified petition is presented shall make an order to show cause, returnable before him at a time and place within the county in not less than fourteen nor more than twenty

Removal of remains.

days from the date of the presentation of said petition, why the remains of any deceased soldiers buried in potter's field, or in any neglected or abandoned cemeteries should not be removed to and reinterred in a properly kept incorporated cemetery in the same town or in a town adjoining the town in which the remains of a deceased soldier is buried, and to fix the amount of the expenses for such removal and reinterment, and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is sought to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioners are a majority of the officers of a veteran soldier organization, or a majority of a memorial committee in towns where two or more veteran soldier organizations exist, or that the petitioners are honorably discharged veteran soldiers in town where no veteran soldier organization exists, and (1) the name of the deceased soldier or soldiers whose remains are sought to be removed, and if known the company and regiment in which he or they served; (2) the name and location of the cemetery in which he is interred and from which removal is asked to be made; (3) the name and location of the incorporated cemetery to which the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no reason or objection is made thereto, he shall make an order directing the removal of the remains of said deceased soldier or soldiers to the cemetery designated in the petition within the town or within a town adjoining the one in which the remains are then buried and shall specify in the order the amount of the expenses of such removal which expenses of removal and reinterment shall be a charge upon the town from which the removal is made and such expenses shall be audited by the town board and included in the tax levy of the town and paid the same as other town charges, and on and after the removal and reinterment of the remains of the deceased soldier or soldiers in a soldiers' plot, the expenses for annual care of the grave in the soldiers' burial plot to which the removal is made shall be annually provided by the town in which the remains were originally buried, at the rate of not to exceed fifty cents per grave and shall be paid annually to the incorporated cemetery

Monument associations.

association to which the remains of each deceased soldier may be removed and reinterred. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased soldier were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relative of the deceased soldier or soldiers or the officer of any cemetery association in which the remains of the deceased soldier or soldiers were originally interred, or the authorities of the town in which the soldier or soldiers were originally buried may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased soldier shall be removed and reset at the grave in the cemetery to which the removal is permitted to be made and in each case the final order shall provide the amount of the expenses of such removals and reinterment and resetting of the headstone or monument. The order shall designate the person or persons having charge of the removals and reinterments. Upon completion of the removal, reinterment and resetting of the headstones or monuments, the person or persons having charge of the same shall make a verified report of the removal, reinterment and resetting of the headstone or monument and file the report in the clerk's office of the proper county. The word "soldier" shall be construed to mean an honorably discharged soldier, sailor or marine who served in the army or navy of the United States, and the words "soldiers' plot" shall be construed to mean a plot of land in any incorporated cemetery set a part to be exclusively used as a place for interring the remains of deceased veteran soldiers of the United States.

Laws 1902, chap. 206, § 2.

§ 229. **Soldiers' monument associations.**—Three or more persons may become a corporation for the purpose of erecting a monument, monuments or memorial, including a memorial hall or building, to perpetuate the memory of the soldiers and sailors who served in defense of the Union in the late war, or in the army or navy of the United States in the late war with Spain, or in the army and navy of the United States in any war in which the government of the United States has been engaged, including the American Revolution on the side of the Colonies; such monument

Property; monuments.

or memorial alike to perpetuate the memory of those soldiers and sailors, who, since rendering such military or naval service have become resident of and die in the town, city or county in which such monument or memorial is erected; by making, acknowledging and filing a certificate, stating the particular object for which the corporation is to be created; the name of the proposed corporation; the number of its directors, not less than six nor more than twelve; the names and places of residence of the persons to be directors until the first annual meeting, and the time for holding its annual meetings. Such certificate shall not be filed without the approval, endorsed thereupon or annexed thereto, of a justice of the supreme court. On filing such certificate, in pursuance of law, the signers thereof, their associates and successors shall be a corporation in accordance with the provisions of such certificate.

Membership Corporations Law, § 120, as am'd Laws 1905, chap. 411.

§ 230. **Property; erection of monuments.**—Such a corporation may acquire and hold, within the county in which its certificate of incorporation is recorded, not more than five acres of land, to be used exclusively for the erection of a suitable monument or monuments or other memorial to perpetuate the memory of the soldiers and sailors who served in the defense of the union in the war of the rebellion, or who served in the army or navy of the United States in the late war with Spain, or in the army or navy of the United States in any war in which the government of the United States has been engaged, including the American Revolution on the side of the Colonies; such monument or memorial alike to perpetuate the memory of those soldiers and sailors who, since rendering such military or naval service, have become resident of and die in the town, city or county in which such monument or memorial is erected. Such a corporation may erect any such monument, monuments or memorial, upon any public street, square or ground of any town, city or village, with the consent of the proper officers thereof, or may purchase or accept the donation of land suitable for that purpose; and may take and hold the property given, devised or bequeathed to it in trust, to apply the same or the income or proceeds thereof for the erection, improvement, embellishment, preservation, repair or renewal of such monument, monuments or memorials, or of any structures, fences or walks upon its land, or for planting or cultivating

Improvement taxes, exemption, etc.

trees, shrubs, flowers or plants, in and around or upon its lands, or for improving or embellishing the same in any manner consistent with design and purposes of the association according to the terms of such grant, devise or bequest. It may take by gift or purchase any lots or lands, in any cemetery within such county, to be used and occupied exclusively for the burial of honorably discharged soldiers and sailors who served in either of such wars, and for the erection of suitable monuments or memorials therein. A town clerk or the board of trustees of a village shall, upon the petition of twenty-five resident taxpayers, submit to a biennial town meeting or village election, as the case may be, a proposition to raise by taxation a sum stated therein, not exceeding five hundred dollars in any one year, for the purpose of erecting such a monument, or contributing to the expense of such a monument erected by a corporation under this section, or for repairing or improving the same and the grounds thereof; and such tax shall be levied in the manner prescribed by law for levying general taxes in such town or village; and when raised shall be applied to the purposes specified in such proposition.

Membership Corporations Law, § 121, as am'd Laws 1905, chap. 411.

§ 231. **Improvement taxes.**—A tax may be levied and collected on the taxable property in a town, village or city in which such monument, monuments or other memorial may be erected, for the purpose of repairing or improving the same and the grounds thereof; and such tax shall be levied in the manner prescribed by law for levying general taxes in such town, village or city.

Membership Corporations Law, § 122; 2 R. S. 1999.

§ 232. **Exemption from taxation.**—The property of any association formed pursuant to this act, shall be exempt from levy and sale on execution, and from all public taxes, rates and assessments, and no street, road, avenue or thoroughfare shall be laid through the lands of such association held for the purposes aforesaid, without the consent of the trustees of such association, except by special permission of the legislature of the State.

Laws of 1866, chap. 273, § 5, as am'd by chap. 299, Laws of 1888; 2 R. S. 1999.

§ 233. **Acquisition of lands for erection of monuments.**—The governing board of a village or town, or the trustees of a monument association, may acquire not to exceed three acres of land,

Public monuments.

for the erection of a soldiers' monument, or a monument or other structure as a memorial of some distinguishing or important event in the history of the State or nation, and for laying out such lands as a public park or square, if such lands are vacant or have buildings thereon not exceeding two thousand five hundred dollars in value, and if a judge of the county, or a justice of the supreme court of the district, in which such memorial is to be erected, shall give his written approval of the acquisition of such lands for such purpose.

Municipal Law, § 25: 2 R. S. 2108. See § 463, ante.

§ 234. **Public monuments in town or county.**—It shall be competent for electors of any town, at any regular town meeting, or of any county, at any regular election to vote any sum of money, to be designated by a majority of all the electors voting at such town meeting or election, for the purpose of erecting a public monument within such town or for the county as the case may be in memory of the soldiers of such town or county, or in commemoration of any public person or event; but no debt shall be created nor shall any tax be imposed on any town or county for such purpose unless the same shall have been voted for by a majority of the legal voters of the town or county affected, voting at such election, nor unless the object and expenditure shall be approved of by a vote of two-thirds of the supervisors elected in such county. The board of supervisors may legalize the vote of any town or county for such purpose, and after such vote they may raise or authorize the specified sum or sums of money to be raised for such purpose in any of the modes provided for by law for raising moneys for towns or counties. All moneys expended by any town for the purposes authorized by this section shall be expended under the direction of the supervisor, town clerk and justices of peace of such town, or a majority of them, or by a commissioner, or commissioners for that purpose appointed by such town officers, or by a majority of them. If the monument to be erected shall be a county monument then the money to be expended therefor shall be under the control of a commissioner, or of commissioners appointed by the board of supervisors to superintend the erection of such monument, and no town or county officer, or commissioner appointed or acting under this section, shall receive any compensation for services rendered thereunder as such officer, or commissioner. The board of supervisors

Monuments, lease of buildings, etc.

of any county shall have power to alter, repeal or amend any resolution or ordinance passed under this section, and so stay further expenditure upon any monument within such county being erected at the expense of such county, or of any town or towns within such county.

Laws of 1869, chap. 855, § 4, as am'd by chap. 23, Laws of 1892; 1 R. S. 749.

This law, 1869, chap. 855, was repealed by Laws 1892, chap. 686, which became a law May 18, 1892. The repealing act makes no reference to the amendment as made by Laws 1892, chap. 23, which went into effect Feb. 11, 1892.

§ 235. **Soldiers monuments.**— Any board of supervisors may, by a vote of two-thirds of its members, raise and appropriate such moneys as it may deem necessary, for the erection within the county of public monuments, in commemoration of the Federal soldiers and sailors in the late war of the rebellion or of any other public person or event and for repairing and remodeling such monuments; all moneys so raised shall be expended by direction of the board of supervisors; but no county officer shall receive any compensation for services rendered pursuant to this section.

County Law, § 38; 1 R. S. 749.

§ 236. **Leases of buildings to Grand Army of Republic.**— A municipal corporation may lease, for not exceeding five years, to a post or posts of the Grand Army of the Republic, or other veteran organization of honorably discharged Union soldiers, sailors or marines, a public building or part thereof, belonging to such municipal corporation, except schoolhouses in actual use as such, without expense, or at a nominal rent, fixed by the board or council having charge of such buildings.

Municipal Law, § 26; 2 R. S. 2108.

§ 237. **War records.**— The adjutant general is among other things further authorized to ask the co-operation and assistance of the adjutant general of the United States and of the city, county and town authorities and officials, and of the Grand Army of the Republic, the Military order of the Loyal Legion, and of organizations and persons in the State of New York and elsewhere in the collection of such other information, relics, memorials and battle flags as is contemplated by this article, in order to make as complete as possible the records, history and sta-

Pay when aiding civil authority.

tistics of the patriotic service of the volunteer soldiers of the state during the war of the rebellion.

Military Code, § 16, subd. 3.

The trustees of the capital are authorized and directed to provide suitable and convenient quarters for a bureau of records whenever the adjutant-general shall require and make demand therefor, and to properly fit up and prepare the same for the safe keeping of such records, books and property and for the display of such colors, standards, battle flags and relics which shall be known and maintained as the hall of military records. The several municipalities of the state may deposit their record books and papers relating to the war in the archives of the hall for safe keeping and transcripts therefrom shall be furnished on application by the chief officer of the municipality without cost to it. Officers or soldiers may deposit their discharge papers, descriptive lists, muster rolls or company or regimental books and papers for safe keeping. The interest arising from the investment of the funds contributed by towns, cities and individuals for the erection of a hall of military records shall be devoted to the maintenance of the hall of military records provided in this section.

Military Code, § 16, subd. 7.

The removal or injury of battle flags, relics, etc., in the state military bureau, is a misdemeanor.

§ 238. **Pay when aiding the civil authority.**—All officers and enlisted men while on duty, or assembled therefor, pursuant to the orders of a judge of the supreme court, sheriff of a county or mayor of a city, or any other civil officer authorized by law to make such a demand on the military or naval forces of the state, in case of riot, tumult, breach of the peace, resistance to process, or whenever called upon in aid of civil authorities, shall receive the pay set forth in section one hundred and fifty-one of this chapter; and such compensation and the necessary expenses incurred in quartering, caring for, warning for duty and transporting and subsisting the troops, as well as the expense incurred for pay, care, and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, as set forth in section one hundred and sixty-five of this chapter shall be paid by the county where such service is rendered. The county treasurer of

Pay, when injured.

such county shall, upon presentation to him of vouchers and pay rolls for such expenses and compensation, certified by the commanding officers of the organizations on duty in aid of civil authority in such counties, and approved by the commanding officer of the national guard, if he be present in command where the duty is performed, or by the commanding officer of the brigade or of the naval militia to which the organizations were attached, forthwith execute in behalf of and in the name of such county, a certificate or certificates of indebtedness for the money required to pay such vouchers and pay rolls; such certificates shall bear interest at the rate of not to exceed six per centum per annum, and shall be made payable on the first day of February following the expiration of two months from their issue, and the amount thereof shall be raised in the next tax budget of said county succeeding their issue, and applied to the payment of such certificates. Said county treasurer shall sell such certificates at public or private sale, and apply the proceeds thereof to the payment of such expenses and compensation. In the city of New York the duties hereby imposed upon a county treasurer shall be performed by the comptroller of said city, who shall raise the money necessary to comply with the provisions of this section by the issue and sale of revenue bonds of said city; the sum necessary to pay said bonds shall be included by the municipal assembly and board of estimate and apportionment of said city in its final estimates for expenses of said city for the year succeeding that in which said bonds were issued. Any county treasurer or public officer, who shall neglect or refuse to perform any of the duties required by this section, shall be personally charged with the cost and all necessary disbursements of any action or proceeding brought to compel such performance, together with a reasonable additional allowance to the plaintiff or relator in such action or proceeding, to be fixed by the court.

Military Code, § 152, as am'd by Laws 1903, chap. 75.

§ 239. **Pay when injured, when a county charge.**—A member of the national guard or naval militia who shall, when on duty or assembled therefor, in case of riot, tumult, breach of the peace, insurrection or invasion, or whenever ordered by the governor, commanding officer of the national guard, or the commanding officer of the naval militia, or called in aid of the civil authorities, receive any injury, or incur or contract any disability or disease,

Pay, when injured.

by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while performing any lawfully ordered duty, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall, during the period of such incapacity, receive the pay provided by this chapter and actual necessary expenses for care and medical attendance. No claim shall be allowed under this section unless the claimant within thirty days after receiving the injury or contracting the disease or disability upon which the claim is made, notifies in writing the adjutant-general of his intention to make such claim. Where a claim is made under this section the adjutant-general may cause examinations of the claimant to be made from time to time by a medical officer or officers designated for the purpose by the adjutant-general, and he may direct the removal of a claimant to, and his treatment in, a hospital designated by the adjutant-general, and if the claimant refuse to permit any such examination or if he refuse to go to such hospital or to follow the advice given or treatment prescribed for him therein, he shall thereby forfeit and be barred from all right to any claim or allowance under this section. Under this chapter no disability shall be considered temporary which continues for more than ninety days from the date of receiving the injury or of incurring or contracting the disease or disability, and pay and expenses for care and medical attendance for more than the said ninety days shall not be allowed. All claims arising under this section shall be inquired into by a medical examiner or by a board of three officers, at least one being a medical officer, to be appointed by the adjutant-general, upon the application of the member claiming to be so incapacitated. Such medical examiner or board shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. The findings of the medical examiner or board shall be subject to the approval of the adjutant-general, who may return the proceedings of the medical examiner or board for revision and for taking further testimony. The amount found due such member by said medical examiner or board to the extent that the findings are approved by the adjutant-general, shall be a charge against and be paid in the manner provided by this chapter, by the county in which such duty was rendered, in every case where a county is by this chapter made

Military parades.

liable to pay for the performance of military duty. In all other cases such sums shall be paid by this state, in like manner as other military accounts are paid.

Military Code, § 165, as am'd by Laws 1903, chap. 75, and Laws 1906, chap. 420.

§ 240. **Military parades by unauthorized bodies prohibited.**—No body of men other than the regularly organized corps of the national guard and militia and the troops of the United States, except such independent military organizations as were on the twenty-third day of April, eighteen hundred and eighty-three, and now are in existence, shall associate themselves together as a military company or organization, or parade in public with firearms, in any city or town of this State. No city or town shall raise or appropriate any money toward arming or equipping, uniforming or in any other way supporting, sustaining or providing drillrooms or armories for any such body of men; but associations wholly composed of soldiers honorably discharged from the service of the United States, or members of the order of Sons of Veterans may parade in public with firearms on Decoration day or on May first — known as Dewey Day, or upon the reception of any regiments or companies of soldiers returning from such service, and for the purpose of escort duty at the burials of deceased soldiers, and students in educational institutions where military science is a prescribed part of the course of instruction, may, with the consent of the governor, drill and parade with firearms in public, under the superintendence of their teachers. This section shall not be construed to prevent any organization authorized to do so by law from parading with firearms, nor to prevent parades by the national guard or naval militia of any other state. The independent military organizations mentioned in this section, not regularly organized as organizations of the national guard, are hereby made subject to the orders of the governor in case of emergency or necessity, to aid the national guard in quelling invasion, insurrection, riot or breach of the peace, provided the officers and members of such organization shall, when so called upon, first sign and execute and deliver through their commanding officer to the officers commanding the national guard, to whom it is ordered to report, a form of enlistment in form to be prescribed by the governor in regulations or orders, for a term not less than thirty days nor more than ninety days at one time;

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and if the service of such organization shall not be required for the full term of their enlistment, they shall be discharged by the order of the governor. All members of such independent organizations, when called into service of the State, as herein provided for, shall be equipped and paid by the State, and shall be protected in the discharge of their duties, and in obeying the orders of the governor, as though a part of the national guard of the State. Any person violating any provisions of this section shall be deemed guilty of a misdemeanor.

Military Code, § 177, as am'd by Laws 1905, chap. 694.

§ 241. **Drafts of volunteers from militia.**—Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the governor shall direct his order to the mayor of any city or the supervisor of any town, who, upon receipt of the same, shall forthwith proceed to draft as many of the reserve militia in his city or town, or accept as many volunteers as are required by the governor, and shall forthwith forward to the governor a list of the persons so drafted or accepted as volunteers.

Military Code, § 9.

§ 242. **Supervisors to furnish armories.**—Whenever it shall appear by the certificate of the commanding officer of the regiment, battalion or squadron not part of a regiment, to which any troop, battery or company organized or existing under the provisions of this chapter, belongs, or in the case of a field hospital, company or signal corps, separate troop, battery or company, by the certificate of the commanding officer of the brigade to which it is attached, together with the certificate of the commanding officer of the national guard or by the certificate of the latter alone where the organization is attached to his headquarters, that such field hospital, company or signal corps, troop, battery or company, has at least the minimum number of enlisted men established by this chapter, who can legally be required to perform the duties prescribed thereby, the supervisors of the county in which such field hospital, company of signal corps, troop, battery or company is located, shall upon the demand of the commanding officer of such field hospital, company of signal corps, troop, battery or company, approved by the commanding officer of the squadron, battalion, regiment or brigade to which it belongs or is attached, or by the commanding officer of the national guard if attached to his headquarters, as the case may be, erect or rent within the

Local armories.

bounds of such county for the use of such field hospital, company of signal corps, troop, battery or company, a suitable and convenient armory, drill-room, and place of deposit for the safe keeping of the arms, equipments, accoutrements, uniforms and military property furnished under the provisions of this chapter. The suitability and convenience of such armory shall be determined by the commanding officer of the brigade to which the organization demanding such armory is attached or by the commanding officer of the national guard if the organization is attached to his headquarters. The supervisors of a county in which are located the headquarters of a battalion not part of a regiment shall provide for such headquarters and attendance at a cost not to exceed five hundred dollars annually, it being understood that this shall cover the rental and the care of said headquarters. The impracticability of such headquarters being established in an armory shall be determined by the brigade commander in whose brigade the battalion is located. The erection, repairs, and alterations of all armory buildings erected or rented at the expense of a county shall be done under the direction and supervision of an inspector appointed by the army commission and an architect to be designated by the board of supervisors of the county. This section shall not apply to or affect that portion of the several counties lying within the boundaries of the city of New York.

Military Code, § 131, as am'd by Laws 1906, chap. 134.

The authority to erect or rent an armory devolves upon the supervisors only where a proper demand is made on them under the Military Code. They cannot exercise the power simply upon their own resolution.

Ford v. Mayor, 63 N. Y. 640.

The demand for an armory or drill-room must particularize the troops for which it is required.

Dickel v. Mayor, 6 Hun, 242.

§ 243. **Local armories.**—Whenever the armory commission shall deem it expedient that an armory be provided for the use of two or more companies of a regiment or a battalion or squadron not part of a regiment or jointly for the use of any such companies, and a battery or troop or both, or that suitable accommodations be provided for brigade headquarters, the supervisors of the county in which such brigade headquarters or such regiment, battalion, squadron, battery or troop, is located, shall, except where such accommodation is provided in a state arsenal, upon the demand of the commanding officer of such brigade, regi-

Expense.

ment, battalion, squadron, battery, or troop, erect or rent, within such county a suitable and convenient armory, approved by the armory commission, or provide suitable accommodation for brigade headquarters approved by such commission. Whenever in the opinion of the commanding officer in charge of any armory, or brigade headquarters, the same shall be unfit for use as an armory, or headquarters, he may make complaint to the armory commission; such commission shall forthwith make, or cause to be made, an examination of such armory or headquarters, and if, after such examination, the commission shall decide that such armory or headquarters is unfit for use it shall immediately report the fact to the board of supervisors, who shall thereupon direct the alteration, repair, enlargement, or abandonment of the same, and in case of abandonment, provide another suitable armory or headquarters, subject to approval by the armory commission as aforesaid. Brigade headquarters when provided shall be deemed for all purposes an armory within the meaning of that word wherever used in this chapter.

Military Code, § 132, as am'd by Laws 1901, chap. 314.

§ 244. **Expenses of erecting, improving and furnishing armories.**—The expenses of erecting, altering, repairing, enlarging or renting armories, purchasing lands for the location of armories, and for providing camp stools and chairs of a sufficient number, telephone service, lavatories, bath, water and wash-closets, the necessary apparatus, fixtures and means for heating, lighting, and ventilating armories, and for properly preserving the arms, equipments, uniforms, books, papers and records kept therein, by the construction of suitable lockers, closets, gun racks, desks and cases and the purchase of all utensils, materials and supplies necessary for the cleaning, care, proper keeping, maintenance and preservation of the armory or portion thereof used or occupied by the organization therein quartered or of the arms, uniforms, equipments, books, papers, records and furniture used and kept by said organization in such armory, shall be a portion of the county charge of each county within the bounds of which is located any arsenal or armory occupied by the national guard, and shall be levied, collected and paid in the same manner as other county charges are levied, collected and paid. No money shall be appropriated for decorating any armory erected or rented under the provisions of this chapter, nor for any other purpose, to be paid

Sites for armories.

out of the moneys thus levied and collected, unless the necessity of such expenditure shall have been examined into and certified to the board of supervisors of the county in which the armory is located, as hereinafter provided. In case expenditure shall be required for erection, alteration, repairing, enlarging, renting, heating, lighting, ventilation, lavatories, bath, water or wash-closets, such expenditure shall be made on the certificate of the senior line officer commanding an organization therein quartered approved by the armory commission. In all other cases such expenditure shall be made upon the certificate of the auditing board of the organization commanded by the ranking line officer quartered therein, approved by the commanding officer of the brigade in whose command such armory is located.

Military Code, § 133, as am'd by Laws 1905, chap. 618.

§ 245. **Acquisition of sites by boards of supervisors.**—The board of supervisors of any county in which any State armory is now to be built or is hereafter required to be erected for the use of the active militia in such county, are authorized to purchase a suitable site for the erection of such armory, to be approved by the armory commission, the title to which shall be taken in the name of and be vested in the people of this State. If such board is unable to agree for the purchase of such site with the owners thereof, the chairman of such board shall acquire title to such property in the name of the people of the State under the Condemnation Law, and such board, when notified by its chairman that any land has been purchased or acquired pursuant to the provisions of this section, shall appropriate such sums as shall be necessary for the payment of the purchase price or cost of such property, together with the cost of acquiring the title thereto, and for the grading, filling, excavating, draining, paving streets, flagging sidewalks, fencing such property, providing sewer connections and the furnishing and equipping of the armory when built, which shall be county charges.

Whenever any real property is taken for the purpose of erecting a State armory thereon, the buildings on such property, or the old materials in the same, may be sold at public or private sale, for the best price that can be obtained, and if the property is taken by the State the net sum realized therefrom shall be paid into the State treasury, and if taken by a county, to the county treasurer of said county, or it may be used for the improvement of the property

Control of armory, etc.

taken by the authorities authorized to erect such armory. This section shall not apply to or affect that portion of the several counties lying within the boundaries of The City of New York.

Military Code, § 136.

§ 246. **Control of armory.**—Every armory shall be under the control and charge of the ranking line officer commanding an organization therein quartered.

Military Code, part of § 137.

§ 247. **Armorsers, janitors and engineers.**—There shall be allowed for each armory and for the headquarters of the national guard, the naval militia and of each brigade, one armorer. If an armory be heated by steam there shall be allowed one engineer and also one assistant engineer of the commanding officer of the brigade within whose command such armory is located, and the officer in charge of such armory shall certify to the disbursing officer of the county in which such armory is located that the services of an assistant engineer are necessary; in an armory occupied by a regiment and lighted by electricity produced by machinery operated by the power of steam, if such steam is generated and machinery operated within such armory, there shall be allowed on like certificate an additional assistant engineer; there shall be allowed for an armory occupied by a regiment, by a battalion or squadron not part of a regiment, by a battery of light artillery, by a troop, by a company of signal corps, by a field hospital, or by two or more separate batteries or companies, one janitor; and the armorer, the engineer and the janitor thus authorized shall be appointed by the ranking officer of the organization or organizations quartered in the armory. Where a field hospital, a company of signal corps, troop, battery of light artillery, or the headquarters of the national guard or of a brigade, occupies a portion of an armory or state arsenal, each shall be entitled to an armorer, and such field hospital, company of signal corps, troop or battery of light artillery shall also be entitled to a janitor, who shall be appointed by its respective commanding officer, and such headquarters and quarters shall be considered an independent armory, upon the approval and certificate of the commanding officer of the national guard or of the brigade within whose command such armory is located. All persons appointed or employed pursuant to this or the succeeding section shall per-

Laborers, compensation.

form such duties as shall from time to time, be prescribed by the officer appointing or employing them.

Military Code, § 138, as am'd by Laws 1906, chap. 134.

§ 248. **Laborers.**— To provide for the proper care and cleanliness of armories and arsenals and of the property therein deposited, the commanding officer of a regiment, battalion or squadron not part of a regiment, troop, battery, company, company of signal corps, field hospital, or brigade, or the ranking commanding officer, where two or more separate batteries or companies are quartered in an armory or arsenal, may appoint laborers as follows: for armories or arsenals having ten thousand square feet or less of floor surface, one laborer; when the floor surface exceeds twenty thousand square feet, two laborers; and for each twenty thousand in excess of twenty thousand, an additional laborer; boiler and engine rooms, unused cellar rooms and rooms used for employees' quarters shall not be included in computing such floor surface. For regiments of heavy or coast artillery, in addition to the above, one expert laborer, competent to care for artillery implements, guns and instruments. For armories of squadrons, troops, batteries, field hospitals and companies of signal corps, in addition to the above, one laborer to each ten horses therein stabled and used for military purposes by such squadron, troop, battery, field hospital or company of signal corps. Before any such appointment is made, the necessity for the employment of such laborer or laborers shall be certified by the commanding officer of the brigade, and such certificate shall be filed in the office of the disbursing officer of the county in which the armory or arsenal is situated. A certificate of the number of feet of floor surface of each armory or arsenal in which laborers are appointed shall be made by the engineer of the brigade and approved by the commanding officer of the brigade within whose command such armory or arsenal is located, and filed in the office of the disbursing officer of the county in which the armory or arsenal is located, except as to counties wholly or partly within the city of New York, when it shall be filed with the comptroller of said city.

Military Code, § 139, as am'd Laws 1906, chap. 134.

§ 249. **Compensation of employes in armories.**— The persons appointed under the provisions of the two preceding sections shall receive compensation for the time actually and necessarily em-

Compensation of laborers.

ployed in their duties, to be fixed by the commanding officer appointing such persons as follows: When employed in armories or arsenals located in cities, armories, janitors and engineers not to exceed four dollars per day, unless the city has a population of less than two hundred thousand, in which case such compensation shall not exceed three dollars per day, and two dollars per day in armories or arsenals not located in cities; laborers not to exceed two dollars per day, except in cities having a population of one million or over, three dollars per day, an armorer employed in an arsenal or armory having two hundred thousand or more square feet of floor surface and occupied by a regiment, and laborers employed in arsenals or armories located in cities having a population of over three hundred thousand and less than one million may, in the discretion of the commanding officer appointing them, receive additional compensation not to exceed twenty-five cents per day after five years service and not to exceed twenty-five cents per day for each succeeding five years service, the aggregate amount of such additional compensation not to exceed one dollar per day, which compensation, as certified to by the commanding officer appointing such persons, under the provisions of the two preceding sections, shall be paid semi-monthly upon the certificate of such officer, and shall be a county charge upon the county in which such armory or arsenal is situated, and shall be levied, collected and paid in the same manner as other county charges are levied, collected and paid. A commissioned officer in active service shall not be eligible for appointment to, and shall not hold the position of armorer, janitor, engineer or laborer in any armory or arsenal.

Military Code, § 140, as am'd by Laws 1905, chap. 618.

The board of supervisors have no discretion, nor jurisdiction, to audit or review the amount of compensation so certified; they have no other duty in reference thereto, except to cause the amount to be levied, collected and paid like other county charges.

And the supervisors have no authority to deduct an allowance for Sundays necessarily employed.

People ex rel. Archambault v. Supervisors, 91 N. Y. 672.

The relator was entitled to the payment, monthly, of a per diem compensation of \$2 per day for his services, as janitor of the armory of the city of Kingston. No provision having been made by the board of supervisors for these payments, he discounted his claim at a bank, paying therefor, in all \$42.50. Held, that the discount allowed the bank was not a county charge, and that an application for mandamus to compel the board to allow the claim, was properly denied.

People ex rel. Johnston v. Supervisors, 43 Hun, 385.

Naval militia.

§ 250. **Armors and employes for naval militia.**— On any vessel used as an armory of the naval militia, in accordance with section one hundred and forty-two of this chapter, the ranking commanding officer of the organization or organizations quartered on said vessel shall have the right to appoint as many employes of the same classes described in the three preceding sections as, in his judgment, the care and safety of the vessel, its equipment, armament and stores demand, and to establish their respective duties, ratings and compensation; always provided, however, that the gross compensation of such employes shall not exceed the amount per day authorized and established by section one hundred and forty of this chapter. The duties of the aforesaid employes shall include service on boats which are under the command of the ranking officer of such naval militia organization.

Military Code, § 141.

§ 251. **Armories for naval militia.**— Armories of the naval militia shall be situated immediately on or near navigable waters of the State, in such position as best to promote the efficiency of the service. The word “armory” as used in this article, and in any part of this chapter when applied to the naval militia, shall be held to include a vessel used as an armory for the purposes of instruction, drill and defense, and a building used for any like purpose or as a place of deposit for naval stores, equipments or property. Organizations of the naval militia shall have the same right to make requisition on the proper public officers for the erection of armories as is granted by law to organizations of the national guard and all provisions of law as to the acquisition of armory sites, the obligation of public officers and public corporations to provide the same and the acquisition of sites, and furnishing, altering, repairing, adding to and erecting armories and the furnishing of supplies to organizations quartered therein are hereby made applicable to organizations of the naval militia. The commanding officer of the naval militia shall at all times have access to armories provided for organizations of his command. The department, bureau, officer or authority having the charge or control of docks within the limits of a city shall upon the requisition of the commanding officer of the naval militia when directed so to do by the armory board of the city of New York as to said city and by the armory commission as to other cities furnish without charge or expense to the state and naval militia suitable

Armory; Decoration Day.

and adequate dock, berthing and mooring facilities for vessels and boats used by any organization of the naval militia located in said city and free access thereto at all times for the members of such militia. The armory board of the city of New York and the armory commission as to other cities are hereby authorized and empowered to furnish dock facilities for the use of the naval militia as hereinbefore stated and to determine the suitability and adequateness of the facilities of the dock, berthing and mooring facilities. The word "dock" where used in this section shall be construed to include wharves, piers, bulkheads, slips, basins, docks and waterfront.

Military Code, § 142, as am'd by Laws 1904, chap. 149.

§ 252. **Armory defined.**—The word armory wherever used in this article shall include suitable stables and stabling accommodations for mounted organizations.

Military Code, § 144, added by Laws 1903, chap. 74.

§ 253. **Town boards may vote expenses to observe Decoration day.**—It shall be lawful for the town boards of any town in this state at any regular or special meeting to vote any sum of money not exceeding fifty dollars in any year, or in towns of over five thousand inhabitants according to the last preceding state enumeration, in which are maintained two or more posts of the Grand Army of the Republic, a sum not exceeding one hundred dollars in any year, for the purpose of defraying the expenses of the proper observance of Memorial or Decoration day, which amount shall be assessed, levied and collected in the same manner as other expenses of said town are assessed, levied and collected and shall be paid to the supervisor of such town and be disbursed by him in such manner as the town board of such town may direct upon vouchers properly receipted and audited by the town board of such town; except that in any town in which there may be a post of the Grand Army of the Republic, such post may direct the manner and extent of such observance and the supervisor shall pay the expense thereof upon the order or orders of the commander or quartermaster of such post, which orders shall be his vouchers for such payment, and in case there may be two or more posts of the Grand Army of the Republic in any such town the commanders and quartermasters of such posts, by concurrent action, shall direct the supervisor of such town what proportion of such money so raised shall be expended by each of such posts, which proportion

Decoration Day, etc.

shall be paid by such supervisor upon the order or orders of the commander and quartermaster of each of such posts.

Laws 1890, chap. 223, as amended by Laws 1898, chap. 36, Laws 1899, chap. 679; Laws 1901, chap. 87.

§ 254. **Same, where two towns join.**—In case there is a post in a town adjoining a town in which no post is located, whose membership includes at least three residents of such town having no post, the post shall appoint a committee of not less than three of its members who are residents of the said adjoining town in which the post is not located, and the supervisor of said town shall pay the expenses of observance of Memorial or Decoration day upon the order or orders of said committee or a majority thereof, which orders shall be his vouchers for such payment.

Laws 1890, chap. 223, § 2, added by Laws 1895, chap. 485.

§ 255. **Leave of absence to veterans to participate in exercises.**—It shall be the duty of the head of every public department and of every court of the state of New York, of every superintendent or foreman on the public works of said state, of the county officers of the several counties of said state, and of the head of every department, bureau and office in the government of the various cities and villages in this state, to give leave of absence with pay for the twenty-four hours of the thirtieth day of May, or such other day as may, according to law, be observed as memorial day, to every person in the service of the state, the county, the city or village, as the case may be, who served in the army or the navy of the United States in the war of the rebellion, or who served in the regular or volunteer army or the navy or the marine corps of the United States during the war with Spain or during the insurrection in the Philippine islands, and who was honorably discharged from such service. A refusal to give such leave of absence to one entitled thereto shall be neglect of duty.

Laws 1895, chap. 220, as am'd by Laws 1902, chap. 81.

§ 256. **All property exempt by law from execution, other than an exempt homestead.**—But real property purchased with the proceeds of a pension granted by the United States for military or naval services, and owned and occupied by the pensioner, or by his wife or widow, is subject to taxation as herein provided. Such property shall be assessed in the same manner as other real property in the tax districts. At the meeting of the assessors to

Property exempt.

hear the complaints concerning assessments, a verified application for the exemption of such real property from taxation may be presented to them by or on behalf of the owner thereof, which application must show the facts on which the exemption is claimed, including the amount of pension money used in or toward the purchase of such property. If the assessors are satisfied that the applicant is entitled to the exemption, and that the amount of pension money used in the purchase of such property equals or exceeds the assessed valuation thereof, they shall enter the word "exempt" upon the assessment-roll opposite the description of such property. If the amount of such pension money used in the purchase of the property is less than the assessed valuation, they shall enter upon the assessment-roll the words "exempt to the extent of dollars" (naming the amount) and thereupon such real property, to the extent of the exemption entered by the assessors, shall be exempt from state, county and general municipal taxation, but shall be taxable for local school purposes, and for the construction and maintenance of streets and highways. If no application for exemption be granted, the property shall be subject to taxation for all purposes. The entries above required shall be made and continued in each assessment of the property so long as it is exempt from taxation for any purpose. The provisions herein, relating to the assessment and exemption of property purchased with a pension apply and shall be enforced in each municipal corporation authorized to levy taxes.

Tax Law, § 4, subd. 5, as am'd by chap. 347, Laws of 1897.

The Code of Civil Proc. also exempts

"Military pay, rewards, et cetera, exempt from execution and other legal proceedings.—The pay and bounty of a non-commissioned officer, musician or private in the military or naval service of the United States or the State of New York; a land warrant, pension or other reward heretofore or hereafter granted by the United States, or by a state, for military or naval services; a sword, horse, medal, emblem or device of any kind presented as a testimonial for services rendered in the military or naval service of the United States or a state; and the uniform, arms and equipments which were used by a person in that service, are also exempt from levy and sale, by virtue of an execution, and from seizure for nonpayment of taxes, or in any other legal proceeding; except that real property purchased with the proceeds of a pension granted by the United States for military or naval services, and owned by the pensioner, or by his wife or widow, is subject to seizure and sale for the collection of taxes or assessments lawfully levied thereon."

This act takes effect September first, eighteen hundred and ninety-six.

Code Civ. Pro., § 1393, as am'd by chap. 348, Laws 1897.

CHAPTER EIGHT.

OF PROCEEDINGS IN CODE OF CRIMINAL PROCEDURE RESPECTING THE SUPPORT OF POOR PERSONS BY RELATIVES, ETC.

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| <p>§257. Who may be compelled to support poor relatives.</p> <p>§258. Order to compel a person to support a poor relative, by whom and how applied for, to court of sessions.</p> <p>§259. Court to hear the case, and make orders of support.</p> <p>§260. Support, when to be apportioned among different relatives.</p> <p>§261. Order, to prescribe time during which support is to continue, or may be indefinite; when and how order may be varied.</p> <p>§262. Costs, by whom to be paid, and how enforced.</p> <p>§263. Action on the order, on failure to comply therewith.</p> | <p>§264. Parents leaving their children chargeable to the public, how proceeded against.</p> <p>§265. Seizure of their property; transfer thereof, when void.</p> <p>§266. Warrant and seizure, when confirmed or discharged; direction of the court thereon.</p> <p>§267. Warrant, in what cases to be discharged.</p> <p>§268. Sale of the property seized, and application of its proceeds.</p> <p>§269. Powers of superintendents of poor.</p> <p>§270. Disorderly persons.</p> <p>§271. Compelling prisoner to work.</p> <p>§272. Proceeds of labor.</p> <p>§273. Support of vagrants.</p> <p>§274. Tramp defined.</p> <p>§275. Tramp a state charge.</p> |
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§ 257. **Who may be compelled to support poor relatives.**— The father, mother and children, if of sufficient ability, of a poor person who is insane, blind, old, lame, impotent or decrepit, so as to be unable by work to maintain himself, must, at their own charge, relieve and maintain him in a manner to be approved by the overseers of the poor of the town where he is, or in The City of New York, by the commissioner of public charities. If such poor person be insane, he shall be maintained in the manner prescribed by the insanity law. The father, mother, husband, wife or children of a poor insane person legally committed to and confined in an institution supported in whole or in part by the state, shall be liable, if of sufficient ability, for the support and maintenance of such insane person from the time of his reception in such institution. [*Thus amended by L. 1898. chap. 399, taking effect April 22, 1898.*]

The liability of a child to support his parents, who are infirm, destitute or aged, is wholly created by statute and, therefore, the law does not imply a promise from the child to pay for necessities furnished, without his request, to an indigent parent.

Edwards v. Davis, 16 Johns. 281.

Who may be compelled to support.

At common law no legal duty rests upon a child to support his indigent parent, and until proceedings to charge him with such support are taken as provided by statute he is not liable therefor.

Frazer v. Dewitt, 49 Hun, 53.

And a son, who requests the superintendents of the poor to take proceedings to have his father committed to an asylum, and promises to pay a certain sum towards his future support, is liable therefor.

Id.

The statute requiring a grandchild to support his indigent grandparents, extends to the case of his indigent maternal grandparents.

Ex parte Hunt, 5 Cow. 284.

A husband is not bound to maintain his wife's children, especially her illegitimate children, born before his marriage.

Overseers of the Poor v. Cox, 7 Cow. 234.

The wife of a man who is bound by law to support her, and who is abundantly able to do so, cannot be regarded as a pauper.

Norton v. Rhodes, 18 Barb. 100.

The case of *Stevens v. Cheney*, 36 Hun. 1, was under the Civil Damage Act brought by a father who was dependent upon his son for support and who was deprived of that support by the sale of intoxicating liquors to the son by the defendant. The court said: "Under this statute (§ 914) the child is bound to aid in the support of a parent if he is a poor person and unable to defend himself, and, if he fails to do so, the court of sessions may compel him. If the child recognizes the duty laid upon him by statute to care for his indigent parent and voluntarily assumes it without waiting to be compelled by the court of sessions, what right have third persons or wrongdoers to interfere and prevent? The law affords the same protection to those who perform their duty voluntarily as it does to those who reluctantly act under compulsion, and we are of opinion that if the parent is a poor person within the provisions of the statute, it was the duty of the son to aid in his support, and if he voluntarily did that and the plaintiff has been deprived of his means of support by reason of the intoxication, that then he may recover, even though his child is over the age of twenty-one years."

See, also, *De Puy v. Cook*, 90 Hun, 43.

If there are two or more persons equally liable to support an indigent person contribution may be ordered and all may be made to pay in accordance with their means.

Stone v. Burgess, 47 N. Y. 521.

The common law affords no means of compelling a husband to support his wife otherwise than by making him liable to third persons who have supplied her with necessaries after he has improperly refused so to do, and the statute providing for the compulsory support of indigent relatives does not apply to husband and wife.

People ex rel. Kehlbeck v. Walsh, 11 Hun, 292.

It is the duty of superintendents of the poor to care for paupers. The wife of a man who is abundantly able to provide for her cannot be deemed a poor person. Superintendents of the poor cannot, therefore, maintain an action in their official capacities against a husband for boarding, clothing and medical aid furnished to his wife as a pauper.

Norton et al. v. Rhodes, 18 Barb. 100.

Order to compel; court to hear case.

§ 258. **Order to compel a person to support a poor relative, et cetera.**—If a relative of a poor person fail to relieve and maintain him, as provided in the last section, the overseers of the poor of the town where he is, or in The City of New York, the commissioners of public charities [] may apply to the court of general sessions of the County of New York, or to the County Court of any other county where the poor person dwells, for an order to compel such relief, upon at least five days' written notice, served personally, or by leaving it at the last place of residence of the person to whom it is directed, in case of his absence, with a person of suitable age and discretion. If such poor person be insane and legally committed to and confined in an institution supported in whole or in part by the state, and his relatives refuse or neglect to pay for his support and maintenance therein, application may be made by the treasurer of such institution in the manner provided in this section for an order directing the relatives liable therefor to make such payment. [*Thus amended by L. 1898, chap. 399, taking effect April 22, 1898, am'd by L. 1904, chap. 520.*]

The overseers of the poor of the town of Cazenovia were the proper parties to begin proceedings to compel a father to support his poor and infirm son. *Tillotson v. Smith*, 12 St. Rep. 331.

The superintendent of the poor cannot maintain an action against a husband for the maintenance of his wife as a pauper. *Norton v. Rhodes*, 18 Barb. 100.

§ 259. **Court to hear the case and make order of support.**—At the time appointed in the notice, the court or a judge thereof must proceed summarily to hear the allegations and proofs of the parties, and must order such of the relatives of the poor person mentioned in section nine hundred and fourteen, as were served with the notice and are of sufficient ability, to relieve and maintain him, specifying in the order the sum to be paid weekly for his support, and requiring it to be paid by the father, or if there be none, or if he be not of sufficient ability, then by the children, or if there be none, or they be not of sufficient ability, then by the mother. If the application be made to secure an order compelling relatives to pay for the maintenance of insane poor persons committed to and confined in an institution supported in whole or in part by the state such order shall specify the sum to be paid for his maintenance by his relatives liable therefor, from the time of his reception in such institution to the time of making such order, and also

Support; time to continue, etc.

the sum to be paid weekly for his future maintenance in such institution. The relatives served with such notice shall be deemed to be of sufficient ability, unless the contrary shall affirmatively appear to the satisfaction of the court or a judge thereof. [*Thus amended by L. 1898, chap. 399, taking effect April 22, 1898.*]

§ 260. **Support; when to be apportioned among different relatives.**—If it appear that any such relative is unable to wholly maintain the poor person or to pay for his maintenance if confined in a state institution for the insane, but is able to contribute toward his support, the court or a judge thereof may direct two or more relatives of different degrees, to maintain him or to pay for his maintenance in such an institution if insane, prescribing the proportion which each must contribute for that purpose; and if it appear that the relatives are not of sufficient ability wholly to maintain him, or to pay for his maintenance in such an institution, if insane, but are able to contribute something, the court or a judge thereof must direct the sum, in proportion to their ability, which they shall pay weekly for that purpose. If it appears that the relatives who are liable for the maintenance of an insane poor person confined in a state institution for the insane are not able to pay the whole amount due for such maintenance from the time of such poor person's admission to such institution, the court or a judge thereof must direct the sum to be paid for such maintenance in proportion to the ability of the relatives liable therefor. [*Thus amended by L. 1898, chap. 399, taking effect April 22, 1898.*]

This section authorizes the court to require persons equally liable for the support of an indigent parent to contribute toward such support according to their ability, and where one of two persons is unable to contribute his entire proportion of such support, the court is authorized to require him to contribute according to his ability, and to require the other to pay the residue.

Stone v. Burgess, 47 N. Y. 521; 2 Lans. 439.

And an order reciting that the two are of sufficient ability, and directing the proportion each one is to pay, if the proportion is unequal, is, in effect, a determination that the one required to pay the less sum is unable to pay his full proportion, but is able to pay the sum fixed, and such order is valid.

Id.

§ 261. **Order to prescribe time during which support is to continue, or may be indefinite; when and how order may be varied.**—The order may specify the time during which the relatives must

Costs; action on failure to comply.

maintain the poor person, or during which any of the sums directed by the court or a judge thereof are to be paid, or it may be indefinite or until the further order of the court or a judge thereof. If the order be for payment of a weekly sum for the maintenance of an insane poor person in a state institution, the order shall specify that such sum shall be paid as long as such insane poor person is maintained in such institution. The court or a judge thereof may from time to time vary the order, as circumstances may require, on the application either of any relative affected by it, or of an officer on whose application the order was made, upon ten days' written notice. [*Thus amended by L. 1898, chap. 399, taking effect April 22, 1898.*]

So long as an order, made by a court of sessions, directing the relative of a poor person to pay a specified sum periodically to the superintendent of the poor for the support of such poor person, remains unchanged, such relative is liable to pay the sum therein prescribed. If he or she desires to be relieved therefrom application should be made under the above section of the Code for an amendment of the order.

Aldridge v. Walker, 73 Hun, 281; 57 St. Rep. 273; 26 N. Y. Supp. 296.

Such an order is not void because it gives no option to such person either to support her daughter or to pay the amount provided, and if it is irregular the remedy is by appeal, and the question of its irregularity cannot be properly raised in an action brought to collect the amount directed to be paid by such person. *Id.*

§ 262. **Costs, by whom to be paid, and how enforced.**—The costs and expenses of the application must be ascertained by the court, and paid by the relatives against whom the order is made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by attachment.

§ 263. **Action on the order on failure to comply therewith.**—If a relative, required by an order of the court or a judge thereof to relieve and maintain a poor person, neglect to do so in the manner approved by the officers mentioned in section nine hundred and fourteen, and neglect to pay to them weekly the sum prescribed by the court or a judge thereof, the officers may maintain an action against the relative, and recover therein the sum prescribed by the court or a judge thereof, for every week the order has been disobeyed, to the time of the recovery, with costs, for the use of the poor. If the order directs a relative to pay for the maintenance of an insane poor person in a state institution,

Parents leaving children.

and such relative refuses or neglects to pay the amount specified therein, an action may be brought by the treasurer of such institution in its corporate name to recover the amount due to such institution by virtue of such order. [*Thus amended by L. 1898, chap. 399, taking effect April 22, 1898.*]

Defendant is not in default of an order of the court requiring him to support his mother at his own house when he has to support her for about a year, and she leaves without any just cause and does not return, he being willing to receive and support her in his family.

Converse v. McArthur, 17 Barb. 410.

When an order is made requiring the relative of a person to support him, and fixing a sum to be paid weekly, the relative may provide for the support of the pauper, at such place and in such manner as he shall deem proper, provided the place and manner are approved by the overseer, and it is not until he has neglected or refused to do this that he is liable for the sum directed to be paid.

Dnel v. Lamb, 1 T. & C. 66.

§ 264. **Parents leaving their children chargeable.**—When the father, or the mother being a widow or living separate from her husband, absconds from the children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the public, the officers mentioned in section 914 may apply to any two justices of the peace or police justices in the county in which any real or personal property of the father, mother or husband is situated, for a warrant to seize the same. Upon due proof of the facts, the magistrate must issue his warrant, authorizing the officers so applying to take and seize the property of the person so absconding. Whenever any child shall be committed to an institution, pursuant to any provision of the Penal Code, any magistrate may issue a warrant for the arrest of the father of the child, and examine into his ability to maintain such child in whole or in part; and if satisfied that such father is able to contribute toward the support of the child, then the magistrate shall, by order, require the weekly payment of such father of such sum, and in such manner as such magistrate shall, in said order, direct, toward the maintenance of such child in such institution, which amount when paid shall be credited by the institution to the city, town or county against any sums due to it therefrom on account of the maintenance of the child.

One of two overseers of the poor is authorized to institute and carry on proceedings for the seizure of property of one who has absconded, leaving his wife or child chargeable to the town. When only one overseer acts the consent of the other will be presumed.

Downing v. Rugar, 21 Wend. 178.

Warrant and seizure of property.

It is the duty of the court, before confirming the warrant and seizure and directing the sale of property, to require the overseers to produce some evidence to establish the case charged in the warrant, against the party whose property is seized, and the case may be contested by such party.

Read v. Triangle, 23 Barb. 236.

In cases of a commitment of a child to an institution, the above section authorizes a magistrate to order the father to pay a sum for the child's support which is to be credited by the institution to the city, town or county against any sum due for maintenance.

People v. Dickson, 57 Hun, 315.

§ 265. **Seizure of their property; transfer thereof, when void.**—The officers so applying may seize and take the property, wherever it may be found in the same county; and are vested with all the right and title thereto, which the person absconding then had. The sale or transfer of any personal property, left in the county from which he absconded, made after issuing the warrant, whether in payment of an antecedent debt or for a new consideration, is absolutely void. The officers must immediately make an inventory of the property seized by them, and return it, together with their proceedings, to the next county court of the county where they reside, there to be filled.

§ 266. **Warrant and seizure, when confirmed or discharged.**—The court, upon inquiring into the circumstances of the case, may confirm or discharge, the warrant and seizure; and if it be confirmed, must, from time to time, direct what part of the personal property must be sold, and how much of the proceeds of the sale, and of the rents and profits of the real property, if any, are to be applied toward the maintenance of the children or wife of the person absconding.

It is not sufficient that the court is satisfied that a warrant has been issued by two justices, and that the overseers have seized the property and made an inventory thereof, and returned it to the court. An inquiry into the merits of the case was intended by the legislature.

People v. Overseers, 23 Barb. 236.

§ 267. **Warrant, in what cases to be discharged.**—If the party against whom the warrant issued, return and support the wife and children so abandoned, or give security satisfactory to any two justices of the peace or police justices in the city, village or town, to the overseers of the poor of the town, or in the city of New York, to the commissioners of charities and corrections, that the wife or children so abandoned shall not be chargeable to the town

Sale of property seized, etc.

or county, then the warrant must be discharged by an order of the magistrates, and the property taken by virtue thereof restored to the party.

§ 268. **Sale of the property seized, and application of its proceeds.**—The officers must sell at public auction the property ordered to be sold, and receive the rents and profits of the real property of the person absconding, and in those cities, villages or towns which are required to support their own poor, the officers charged therewith must apply the same to the support of the wife or children so abandoned; and for that purpose must draw on the county treasurer, or in the city of New York, upon the comptroller, for the proceeds as directed by special statutes. They must also account to the county court of the county, for all money so received by them, and for the application thereof, from time to time, and may be compelled by that court to render that account at any time.

§ 269. **Powers of superintendents of poor.**—In those counties where all the poor are a charge upon the county, the superintendents of the poor are vested with the same powers, as are given by this title to the overseers of the poor of the town, in respect to compelling relatives to maintain poor persons, and in respect to the seizure of the property of a parent absconding and abandoning his family; and are entitled to the same remedies in their names, and must perform the duties required by this title, of overseers, and are subject to the same obligations and control.

An action cannot be maintained by superintendents of poor against a husband for boarding, clothing and medical aid furnished to his wife as a pauper; notwithstanding he has maltreated her and expelled her from his house without just cause, and refuses to provide for her though of sufficient ability to do so.

Norton v. Rhodes, 18 Barb. 100.

It was proper for the overseers of the poor of the town of Cazenovia to begin proceedings against a father to compel him to support his poor and infirm son.

Tillotson v. Smith, 12 St. Rep. 331.

§ 270. **Disorderly persons and imprisonment of same.**—The court may also, in its discretion, order a person convicted as a disorderly person, to be kept in the county jail, or, in the city of New York, in the city prison or penitentiary of that city, for a term not exceeding six months at hard labor.

Code Crim. Pro., § 911.

Compelling prisoners to work, etc.

§ 271. **Compelling prisoner to work — Materials, etc.**— If there be no means provided in the prison, for employing the offender at hard labor, the court may direct the keeper to furnish him such employment as it may specify, and for that purpose, to purchase materials and implements, not exceeding a prescribed value, and to compel the offender to perform the work allotted to him. The expenses incurred in carrying the order into effect, must be paid to the keeper by the county treasurer, upon the delivery to him of the order of the court, and an account under the oath of the keeper, of the materials and implements furnished.

Code Crim. Pro., § 912.

§ 272. **Proceeds of prisoner's labor, etc.**— The keeper must sell the produce of the labor of the offender, and must account for the cost of the materials or implements purchased, and for one-half of the surplus, to the board of supervisors, and pay it into the county treasury, and pay the other half of the surplus to the person by whom it was earned, on his discharge from imprisonment. He must also account to the court, when required, for the materials or implements purchased, and for the disposition of the proceeds of the labor of the offender.

Code Crim. Pro., § 913.

§ 273. **Support of vagrants.**— The magistrate must immediately cause the certificate which constitutes the record of conviction, together with the testimony taken before him as to the residence of such vagrant, to be filed in the office of the clerk of the county, and must, by a warrant signed by him with his name of office, commit the vagrant, if not a notorious offender, and a proper object for such relief, to the county poorhouse, if there be one, or to the almshouse or poorhouse of the city, village or town, for not exceeding six months, at hard labor, or, if the vagrant be an improper person to be so committed, he must be committed for a like term to the county jail. In those counties of the State where the distinction between county poor and town poor is maintained, the expense of conviction and maintenance during the commitment of any vagrant committed to any one of the place of confinement above specified, who shall at the time of such commitment have obtained a legal settlement in one of the towns of the county in which said person shall be convicted, shall be a charge upon the town where they may reside at the time of such commitment.

Code Crim. Pro., § 892, as am'd by chap. 664, Laws of 1898, in effect September 1, 1898.

Tramps.

§ 274. **Tramp defined.**— A tramp is any person, not blind, over sixteen years of age, and who has not resided in the county in which he may be at any time for a period of six months prior thereto, who

1. Not having visible means to maintain himself, lives without employment; or

2. Wanders abroad and begs, or goes about from door to door, or places himself in the streets, highways, passages or public places to beg or receive alms; or

3. Wanders abroad and lodges in taverns, groceries, alehouses, watch or station houses, outhouses, market places, sheds, stables, barns or uninhabited buildings, or in the open air, and does not give a good account of himself.

Code Crim. Pro., sec. 887a. added by chap. 664. Laws 1898: in effect September 1, 1898.

§ 275. “Tramps” are a State charge, during their imprisonment, and the law requires them to be sentenced to the nearest penitentiary.

Laws 1885, chap. 490, § 1.

CHAPTER NINE.

THE STATE CHARITIES LAW.

An act relating to state charities, constituting chapter twenty-six of the General Laws.

CHAPTER XXVI OF THE GENERAL LAWS.

STATE CHARITIES LAW.

- ARTICLE I. State board of charities. (§§ 1-18.)
II. State charities aid association. (§§ 30-32.)
III. Regulations of finances of state charitable institutions; reports to and accounts against municipalities. (§§ 40-47.)
IV. Syracuse state institution for feeble-minded children. (§§ 60-70.)
V. State custodial asylum for feeble-minded women. (§§ 80-83.)
VI. Rome state custodial asylum. (§§ 90-94.)
VII. The Craig colony for epileptics. (§§ 100-114.)
VIII. Institutions for juvenile delinquents. (§§ 120-130.)
VIIIa. Penal Code provisions relating to the commitment of children to institutions.
IX. Houses of refuge and reformatories for women. (§§ 140-153.)
X. Thomas asylum for orphan and destitute Indian children. (§§ 160-165.)
XI. Laws repealed; when to take effect. (§§ 170-171.)

ARTICLE I.

STATE BOARD OF CHARITIES.

- | | |
|---|---|
| §1. Short title. | §11. Powers and duties of board on visits and inspections. |
| §2. Definitions. | §12. Investigations of institutions. |
| §3. State board of charities. | §13. Orders of board directed to institutions. |
| §4. Officers of the board. | §14. Correction of evils in administration of institutions. |
| §5. Compensation and expenses of commissioners. | §15. Duties of the attorney-general and district attorney. |
| §6. Meetings and effect of nonattendance. | §16. State, nonresident and alien poor. |
| §7. Office room and supplies. | §17. Reports of state board of charities. |
| §8. Official seal, certificates and subpoenas. | §18. Institutions for the deaf and dumb and the blind. |
| §9. General powers and duties of board. | |
| §10. Visitations, inspection and supervision of institutions. | |

§ 1. **Short title.**—This chapter shall be known as the State charities law.

State board of charities.

§ 2. **Definitions.**—The term State charitable institutions, when used in this chapter, shall include all institutions of a charitable, eleemosynary, correctional or reformatory character, supported in whole or in part by the state, except institutions for the instruction of the deaf and dumb and the blind, and such institutions which, by section eleven, article eight of the constitution, are made subject to the visitation and inspection of the commission in lunacy, or the prison commission, whether managed or controlled by the state or by private corporations, societies or associations.

In the case of *People ex rel. Institution for the Blind v. Fitch*, 16 Misc. 464, BEEKMAN, J., in special term, held that the New York Institution for the Blind in New York city was not a charitable institution under the constitutional provision authorizing visitation and inspection by the state board of charities. In that case he recognized institutions for the deaf and dumb and the blind, organized for the education of inmates, and those organized for the care and support of the deaf and dumb and the blind, without regard to their age or capacity for instruction, as belonging to two separate and distinct classes. The institutions organized for educational purposes are not charitable institutions.

§ 3. **State board of charities.**—There shall continue to be a state board of charities, composed of twelve members, who shall be appointed by the governor, by and with the advice and consent of the senate, one of whom shall be appointed from, and reside in each judicial district of the state, one additional member from the county of Kings, and three additional members from the county of New York, who shall respectively reside in such counties. They shall be known as commissioners of the state board of charities, and hold office for eight years. No commissioner shall qualify or enter upon the duties of his office, or remain therein, while he is a trustee, manager, director or other administrative officer of an institution subject to the visitation and inspection of such board. The commissioners in office at the time this chapter takes effect, shall continue in office for the terms for which they were respectively appointed. [*Thus amended by L. 1897, ch. 437, taking effect immediately.*]

§ 4. **Officers of the board.**—The board may elect a president, and vice-president from its own members, and shall appoint and continue to have a secretary, and may appoint such other officers, inspectors and clerks as it may deem necessary or proper and fix their compensation, who shall respectively hold their office during the pleasure of the board.

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§ 5. **Compensation and expenses of commissioners.**—The compensation of each commissioner, in recognition of the provisions of the constitution, is fixed at ten dollars for each day's attendance at meetings of the board or of any of its committees, not exceeding in any one year the sum of five hundred dollars. The expenses of each commissioner, necessarily incurred while engaged in the performance of the duties of his office, and his outlay for any assistance that may have been required in the performance of such duties, on the same being paid out and certified by the commissioner making the charge, shall be paid by the treasurer, on the warrant of the comptroller.

L. 1895, chap. 771, § 6.

§ 6. **Meetings and effect of nonattendance.**—The board may adopt rules and orders, regulating the discharge of its functions and defining the duties of its officers. It shall, by rule, provide for holding stated and special meetings. Six members regularly convened shall constitute a quorum. The failure on the part of any commissioner to attend three consecutive meetings of the board during any calendar year, unless excused by a formal vote of the board, may be treated by the governor as a resignation by such nonattending commissioner and the governor may appoint his successor. The annual reports of the board shall give the names of commissioners present at each of its meetings.

L. 1893, chap. 771, § 7.

§ 7. **Office room and supplies.**—The trustees of public buildings shall furnish and assign to such board, in the capitol, at Albany, suitably furnished rooms for its office and place of holding meetings, and the comptroller shall furnish it with all necessary journals, account books, blanks and stationery.

L. 1895, chap. 771, § 3.

§ 8. **Official seal, certificates and subpœnas.**—The board shall cause a record to be kept of its proceedings by its secretary or other proper officer, and it shall have and use an official seal; and the records, its proceedings and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of its president or secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven; it may issue subpœnas, which, when authenticated by its president

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and secretary, shall be obeyed and enforced in the same manner as obedience is enforced to an order or mandate made by a court of record.

L. 1895, chap. 771, § 4.

§ 9. **General powers and duties of board.**— The State board of charities shall visit, inspect and maintain a general supervision of all institutions, societies or associations which are of a charitable, eleemosynary, correctional or reformatory character, whether state or municipal, incorporated or not incorporated, which are made subject to its supervision by the constitution or by law; and shall,

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions aforesaid.

4. Approve or disapprove the organization and incorporation of all institutions of a charitable, eleemosynary, correctional or reformatory character which are or shall be subject to the supervision and inspection of the board.

5. Investigate the management of all institutions made subject to the supervision of the board, and the conduct and efficiency of the officers or persons charged with their management, and the care and relief of the inmates of such institutions therein or in transit.

6. Aid in securing the best sanitary condition of the buildings and grounds of all such institutions, and advise measures for the protection and preservation of the health of the inmates.

7. Aid in securing the establishment and maintenance of such industrial, educational and moral training in institutions having the care of children as is best suited to the needs of the inmates.

8. Establish rules for the reception and retention of inmates of all institutions which by section fourteen of article eight of the constitution, are subject to its supervision.

9. Investigate the condition of the poor seeking public aid and advise measures for their relief.

10. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

11. Collect statistical information in respect to the property,

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receipts and expenditures of all institutions, societies and associations subject to its supervision, and the number and condition of the inmates thereof, and of the poor receiving public relief.

12. Approve or reject plans and specifications for new buildings for any state institution subject to its supervision, and also for unusual repairs or improvements to existing buildings of such institutions; and no such buildings shall be erected, or such repairs or improvements made, until the plans and specifications therefor have been approved by the state board. [Thus added by L. 1899, chap. 504, taking effect May 3, 1899.] § 12 repealed by Law 1902, c. 252, § 2.

L. 1895, chap. 771, § 2.

§ 10. **Visitation, inspection and supervision of institutions.**—All institutions of a charitable, eleemosynary, reformatory or correctional character or design, including reformatories (except those now under the supervision and subject to the inspection of the prison commission), but including all reformatories, except those in which adult males convicted of felony, shall be confined, asylums and institutions for idiots and epileptics, alms-houses, orphan asylums, and all asylums, hospitals and institutions, whether state, county, municipal, incorporated or not incorporated, private or otherwise, except institutions for the custody, care and treatment of the insane, are subject to the visitation, inspection and supervision of the state board of charities, its members, officers and inspectors. Such institutions may be visited and inspected by such board, or any member, officer or inspector duly appointed by it for that purpose, at any and all times.

Such board or any member thereof may take proofs and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection.

Any member or officer of such board, or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge thereof, any information he may deem necessary in the discharge of his duties. The board may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner, for the use of the board. No such officer or inspector shall divulge or communicate to any person without the knowledge and consent of said board any facts

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or information obtained pursuant to the provisions of this act; on proof of such divulgement or communication such officer or inspector may at once be removed from office. The annual reports of each year shall give the results of such inquiries, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employe of any such institution, society or association who shall unlawfully refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish the information required by the board or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The right and powers hereby conferred may be enforced by an order of the supreme court after notice and hearing, or by indictment by the grand jury of the county or both.

L. 1895, chap. 771, §§ 8, 9, and 10, subd. 12.

§ 11. **Powers and duties of board on visits and inspections.**—
On such visits, inquiry shall be made to ascertain:

1. Whether all parts of the state are equally benefited by the institutions requiring state aid.

2. The merits of any and all requests on the part of any such institution for state aid, for any purpose, other than the usual expenses thereof; and the amount required to accomplish the object desired.

3. The sources of public moneys received for the benefit of such institution, as to the proper and economical expenditure of such moneys, and the condition of the finances generally.

4. Whether the objects of the institution are being accomplished.

5. Whether the laws and the rules and regulations of this board, in relation to it, are fully complied with.

6. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

7. The methods of government and discipline of its inmates.

8. The qualifications and general conduct of its officers and employes.

9. The condition of its grounds, buildings and other property.

10. Any other matter connected with or pertaining to its usefulness and good management.

L. 1895, chap. 771, § 10, subds. 1-11.

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§ 12. **Investigations of institutions.**— The board may direct an investigation, by a committee of one or more of its members, of the affairs and management of any institution, society or association, subject to its supervision, or of the conduct of its officers and employes. The commissioner or commissioners designated to make such investigation are hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths, and to examine persons under oath, and to exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

L. 1895, chap. 771, § 12.

§ 13. **Orders of board directed to institutions.**— If it shall appear, after such investigation, that inmates of the institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision, or other condition necessary to their comfort and well being, said board may issue an order, in the name of the people, and under its official seal, directed to the proper officers or managers of such institution, requiring them to modify such treatment or apply such remedy, or both, as shall therein be specified; before such order is issued, it must be approved by a justice of the supreme court, after such notice as he may prescribe and an opportunity to be heard, and any person to whom such an order is directed who shall willfully refuse to obey the same, shall, upon conviction, be adjudged guilty of a misdemeanor.

L. 1895, chap. 771, § 13.

§ 14. **Correction of evils in administration of institutions.**— The state board of charities shall call the attention of the trustees, directors or managers of any such institution, society or association, subject to its supervision, to any abuses, defects or evils which may be found therein, and such officers shall take proper action thereon, with a view to correcting the same, in accordance with the advice of such board.

L. 1895, chap. 771, § 14.

§ 15. **Duties of the attorney-general and district attorneys.**— If, in the opinion of the board or any three members thereof, any matter in regard to the management or affairs of any such institution, society or association, or any inmate or person in any way connected therewith, require legal investigation or action of any

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kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, and he shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties.

L. 1895, chap. 771, § 17.

§ 16. **State, nonresident and alien poor.**— A poor person shall not be admitted as an inmate into a state institution for the feeble-minded, or epileptics, unless a resident of the state for one year next preceding the application for his admission.

The state board of charities, and any of its members or officers, may, at any time, visit and inspect any institution subject to its supervision to ascertain if any inmates supported therein at a state, county or municipal expense are state charges, nonresidents or alien poor; and it may cause to be removed to the state or country from which he came any such nonresident or alien poor found in any such institution.

16a added by L. 1905, c. 452 L. 1880, chap. 549.

§ 17. **Reports of State board of charities.**— The State board of charities shall annually report to the legislature its acts, proceedings and conclusions for the preceding year, with results and recommendations, which report shall include the information obtained in its inquiries and investigations, and from the reports made to it as in this chapter provided, giving a complete and itemized statement of expenditures for state poor, and of such other matters relating to the institutions subject to its visitations, as it may deem necessary or proper, destitute children who may be distributed through the various institutions of the state, or who may be without instruction or guidance, and furnish in tabulated statements, as nearly as possible, the number, sex, age and nativity of persons in this state, and in the several counties thereof, who are in any way receiving the aid of public, private or organized charity, with any other particulars it may deem proper. And all officers of such institutions shall furnish such statistics on or before the first day of November, in each and every year for the preceding fiscal year, as may be required by said board; and every person refusing to do so, in violation of this section without reasonable excuse, shall

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be subject to a penalty of one hundred dollars, to be sued for in the name of the people by the attorney-general of the state, upon his receiving written notice from the state board of charities of such refusal. The annual reports of the board may, in its discretion, present the designs and plans and the general estimates for buildings and improvements, which it may deem necessary for any state charitable institution, with the opinion of the board respecting any appropriation required as asked in behalf of such institution, other than for maintenance or ordinary purposes. The board may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports.

L. 1895, chap. 771, § 18.

§ 18. **Institutions for the deaf and dumb and the blind.**— Institutions for the deaf and dumb and the blind shall be subject to such visitation and inspection by the state board of charities as the constitution provides, but nothing in this article shall be deemed to take from the comptroller of the state any power which he now has to audit and supervise the expenditures made on account of the institutions for deaf-mutes and for the blind.

§§ 19 to 27 added by Laws 1899, chap. 368.

ARTICLE II.

STATE CHARITIES AID ASSOCIATION.

- §30. Visits by the state charities aid association. institutions; enforcement of orders.
§31. Duties of officers in charge of in- §32. Annual reports.

§ 30. **Visits by the State charities aid association.**— Any justice of the supreme court, on written application of the state charities aid association, through its president or other officer designated by its board of managers, may grant to such person as may be named in such application, orders to enable such persons, or any of them, as visitors of such association to visit, inspect and examine in behalf of such association any of the public charitable institutions and state hospitals for the insane owned by the state, and the county, town and city poor-houses and alms-houses within the state. The persons so appointed to visit, inspect and examine such institutions shall reside in the counties from which such institutions receive their inmates, and such appointments shall be made by a justice of the supreme court of the judicial district in which such visitors reside. Each order shall specify the institution to be visited, inspected and examined and the name of each person by whom such visitation, inspection and examination shall be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.

L. 1893, chap. 635, § 1.

§ 31. **Duties of officers in charge of institutions; enforcement of orders.**— All persons in charge of any such institution shall admit each person named in any such order into every part of such institution, and render such person every possible facility to enable him to make in a thorough manner such visits, inspection and examination, which are hereby declared to be for a public purpose, and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in the same manner as obedience is enforced to an order or mandate by a court of record.

L. 1893, chap. 635, § 2.

State charities aid association.

§ 32. **Annual reports.**— Such association shall make an annual report to the state board of charities upon matters relating to the institutions subject to the visitation of such board; and to the state commission in lunacy upon matters relating to the institutions subject to the inspection and control of such commission. Such reports shall be made on or before the first day of November for each preceding fiscal year.

L. 1893, chap. 635, § 3.

ARTICLE III.

All am'd by chap. 252, L. 1902.

REGULATION OF FINANCES OF STATE CHARITABLE INSTITUTIONS, AND REPORTS TO AND ACCOUNTS AGAINST MUNICIPALITIES.

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| §40. Fiscal year. | §45. Reports to supervisors of appointments and committals to charitable institutions. |
| §41. Monthly estimates of expenses; contingent fund. | §46. Reports by officers of certain institutions to clerks of boards of supervisors and cities. |
| §42. Monthly statements of receipts and expenditures. | §47. Verified accounts against counties, cities and towns. |
| §43. Affidavit of steward; vouchers. | |
| §44. Purchases. | |

§ 40. **Fiscal year.**— The fiscal year of all State charitable institutions shall commence with the first day of October in each year, and close with the thirtieth day of September, next succeeding; and the annual reports of such institutions required by this chapter, shall be made for the fiscal year as herein named.

L. 1879, chap. 109.

§ 41. **Monthly estimates of expenses; contingent fund.**— The superintendent or other managing officer of each of the state charitable institutions, and of the New York State School for the Blind at Batavia, shall, on or before the fifteenth day of each month, cause to be prepared duplicate estimates, in minute detail, of the expenses required for the institution of which he has the supervision, for the ensuing month. He shall countersign and submit one of such duplicates to the comptroller, and retain the other to be placed on file in the office of the institution. The comptroller may cause such estimates to be revised either as to quantity and quality of supplies and the estimated cost thereof. Upon the revision and approval of such estimate, the comptroller shall authorize the boards of managers or other managing officers of such institutions to make drafts on him, as the money may be required for the purposes mentioned in such estimates, which drafts shall be paid on his warrant, out of the funds in the treasury of the state appropriated for the support of such charitable institutions. In every such estimate, there shall be a sum named,

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not to exceed two hundred and fifty dollars, as a contingent fund, for which no minute detailed statement need be made. No expenditure shall be made from such contingent fund, except in case of actual emergency, requiring immediate action, and which cannot be deferred without loss or danger to the institution, or inmates thereof. The treasurer of a state charitable institution shall not pay accounts for goods furnished, salaries of officers, or wages of employes, unless they are contained in the estimate provided in this section, and duly approved by the comptroller.

L. 1895, chap. 13, §§ 1 and 2.

§ 42. **Monthly statements of receipts and expenditures.**—The treasurer of each state charitable institution shall on or before the fifteenth day of each month, make to the comptroller, a full and perfect statement of all the receipts and expenditures, specifying the several items, for the last preceding calendar month. Such statement shall be verified by the affidavit of the treasurer attached thereto, in the following form:

I, ..., treasurer of the, do solemnly swear that I have deposited in the bank designated by law for such purpose all the moneys received by me on account of such during the last month; and I do further swear that the foregoing is a true abstract of all the moneys received and expenditures made by me or under my direction as such treasurer during the month ending on the day of, 18..

L. 1895, chap. 807, p. 588.

§ 43. **Affidavit of steward; vouchers.**—There shall be attached to such treasurer's statement, the affidavit of the steward or other officer having like powers, to the effect that the goods and other articles therein specified were purchased and received by him or under his directions at the institution, that the goods were purchased at a fair cash market price and paid for in cash, and that he or any person in his behalf had no pecuniary or other interest in the articles purchased; that he received no pecuniary or other benefit therefrom in the way of commission, percentage, deductions or presents, or in any other manner whatever, directly or indirectly; that the articles contained in such bill were received at the institution; that they conformed in all respects to the invoiced goods received and ordered by him, both in quality and quantity.

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Such statement shall be accompanied by the voucher showing the payment of the several items contained in the statement, the amount of such payment and for what the payment was made.

Such vouchers shall be examined by the comptroller and compared with the estimates made for the month for which the statement is rendered.

If any voucher is found objectionable, the comptroller shall endorse his disapproval thereon, with the reason therefor, and return it to the treasurer, who shall present it to the board of managers for correction and immediately return it to the comptroller. All such vouchers shall be filed in the office of the comptroller.

L. 1893, chap. 214, § 4.

§ 44. **Purchases.**—All purchases for the use of the State charitable institutions shall be made for cash and not on credit or time; every voucher shall be duly filled up at the time it is taken, and with every abstract of vouchers paid, there shall be proof on oath that the voucher was filled up and the money paid at the time it was taken. The board of managers shall make all needful rules and regulations to enforce the provisions of this section. No member or officer of the state board of charities or manager or officer of a state charitable institution shall be interested, directly or indirectly, in the furnishing of materials, labor or supplies for the use of any state charitable institution nor shall any manager act as attorney or counsel for the board of managers thereof. [*Am'd L. 1903, chap. 473.*]

L. 1895, chap. 932.

§ 45. **Reports to supervisors of appointments and committals to charitable institutions.**—Every judge, justice, superintendent or overseer of the poor, supervisor or other person who is authorized by law to make appointments or commitments to any state charitable institution, except alms-houses, in which the board, instruction, care or clothing is a charge against any county, town or city, shall make a written report to the clerk of the board of supervisors of the county, or of the county in which any town is situated, or to the city clerk of any city, which are liable for any such board, instruction, care or clothing, within ten days after such appointment or commitment, and shall therein state, when known, the nationality, age, sex and residence of each person so appointed or

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committed and the length of time of such appointment or commitment.

L. 1880, chap. 347, §§ 1, 2, 8, 9.

§ 46. **Reports by officers of certain institutions to clerks of supervisors and cities.**—The keeper, superintendent, secretary, director or other proper officer of a state charitable institution to which any person is committed or appointed, whose board, care, instruction, tuition or clothing shall be chargeable to any city, town or county, shall make a written report to the clerk of such city or to the clerk of the board of supervisors of the county, or of the county in which such town is situated, within ten days after receiving such person therein. Such report shall state when such person was received into the institution, and, when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making the same, and the sum chargeable per week, month or year for such person. If any person so appointed or committed to any such institution shall die, be removed or discharged, such officers shall immediately report to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of the city from which such person was committed or appointed, the date of such death, removal or discharge.

L. 1880, chap. 347, §§ 3, 4.

§ 47. **Verified accounts against cities and towns.**—The officers mentioned in the last section shall annually, on or before the fifteenth day of October, present to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of a city from which any such person is committed and appointed, a verified report and statement of the account of such institution with such county, town or city, upon to the first day of October, and in case of a claim for clothing, an itemized statement of the same; and if a part of the board, care, tuition or clothing has been paid by any person or persons, the account shall show what sum has been so paid; and the report shall show the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the appointment or commitment, and the date and length of the same, and the time to which the account has been paid, and the amount claimed to such first day of October, the

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sum per week or per annum charged, and if no part of such account has been paid, the report shall show such fact.

Any officer who shall refuse or neglect to make such report shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town, city or county affected thereby.

The clerk of the board of supervisors who shall receive any such report or account shall file and present the same to the board of supervisors of his county on the second day of the annual meeting of the board next after the receipt of the same.

L. 1880, chap. 347, §§ 5, 6, 7. §§ 48-49 a Law, 1904, c. 457, § 50 a Law, 1906, c. 685.

ARTICLE IV.

SYRACUSE STATE INSTITUTION FOR FEEBLE-MINDED CHILDREN.

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| §60. Institution for idiots or feeble-minded children. | §65. Duties of superintendent. |
| §61. Powers and duties of boards of directors. | §66. Duties of treasurer. |
| §62. Salaries of officers. | §67. Semi-annual meeting and records of board of directors. |
| §63. Directors may hold donations in trust. | §68. Manner of receiving pupils. |
| §64. By-laws. | §69. Discharge of state pupils and payment of expenses. |
| | §70. Expense of clothing state pupils. |

§ 60. **Institution for idiots or feeble-minded children.**—The management of the Syracuse State Institution for Feeble-Minded Children at Syracuse shall continue to be in a board of managers, which shall hereafter consist of the superintendent of public instruction and eight other persons, who shall continue to be appointed by the senate upon the recommendation of the governor, as often as vacancies shall occur therein, and shall hold office for eight years, and until their successors are severally appointed, subject to removal by the governor for cause, after an opportunity given them to be heard in their defense. The managers now in office shall hold their offices until the expiration of the term for which they were respectively appointed.

L. 1851, chap. 502, § 1.

§ 61. **General powers and duties of boards of managers.**—Five members of the board shall constitute a quorum for the transaction of business. The board shall have the general direction and control of all the property and concerns of the institution, and shall take charge of its general interests and see that its general design is carried into effect, according to law and the by-laws, rules and regulations of the institution. It shall appoint a superintendent, who shall be a well-educated physician, and a treasurer, who shall reside in the city of Syracuse, and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and with such sureties as the comptroller shall approve. Such board shall annually, on or before the first day of February, report to the legislature the condition of the institution.

L. 1862, chap. 220, §§ 3, 4.

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§ 62. **Salaries of officers.**— The board shall, from time to time, determine the annual salaries and allowances of the resident officers of the institution.

Such salaries and allowances shall be paid monthly by the treasurer of the institution in the same manner as other claims against the institution.

L. 1862, chap. 220, §§ 5.

§ 63. **Managers may hold donations in trust.**— The managers may take, and hold in trust for the state, any grant or devise of land, or any donation or bequest of money or other personal property, to be applied to the maintenance and education of feeble-minded children and the general use of the institution.

L. 1862, chap. 220, § 7.

§ 64. **By-laws.**— The managers may establish by-laws regulating the appointment and duties of officers, teachers, attendants and assistants; fixing the conditions of admission, support and discharge of pupils; and for conducting in a proper manner the business of the institution; and ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the institution.

L. 1862, chap. 220, § 8.

§ 65. **Duties of superintendent.**— The superintendent shall be the chief executive officer of the institution. He shall, subject to the provision of the board of managers and the by-laws and regulations established by them,

1. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same;

2. Appoint a steward, a medical assistant and matron, who, with the superintendent, shall constantly reside in the institution or upon premises adjoining, and shall be termed the resident officers thereof;

3. Employ such teachers, attendants and assistants as he may think proper and necessary to economically and efficiently carry into effect the design of the institution; prescribe their several duties and places, fix their compensation, and discharge any of them;

4. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy, in any department of labor and expense;

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5. Maintain salutary discipline among all who are in the employ of the institution, and enforce strict compliance with his instructions, and uniform obedience to all the rules and regulations of the institution;

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, with the condition and prospects of the pupils to be kept regularly, from day to day, in books provided for the purpose;

7. See that such accounts and records shall be fully made up to the first days of April and October in each year, and that the principal effects and results, with his report thereon, be presented to the board at its semi-annual meetings;

8. Conduct the official correspondence of the institution and keep a record of the applications received, and the pupils admitted;

9. Prepare and present to the board at its annual meetings, when required, an inventory of all the personal property and effects belonging to the institution;

10. Account, when required, for the careful keeping and economical use of all furniture, stores and other articles furnished for the institution;

11. Enter in a book to be provided and kept for that purpose, at the time of the admission of each pupil to the institution, a minute, with the date, name, residence of the pupil, and of the persons on whose application he is received; with a copy of the application, statement, certificate, and all other papers accompanying such pupil; the originals of which he shall file and carefully preserve.

L. 1862, chap. 220.

§ 66. **Duties of treasurer.**—The treasurer shall,

1. Have the custody of all moneys, notes, mortgages and other securities and obligations belonging to the institution;

2. Keep a full and accurate account of all receipts and payments, as directed in the by-laws, and such other accounts as shall be required of him by the managers;

3. Balance all the accounts on his book on the first day of each October, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and, within three days thereafter, deliver the same to the auditing committee of the managers, who shall compare the same with the books and vouch-

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ers, and verify the same by a further comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting;

4. Render a quarterly statement of his receipts and payments to such auditing committee, who shall, in like manner, as above, compare, verify, report and certify the result thereof to the managers at their annual meeting, who shall cause the same to be recorded in one of the books of the institution;

5. Render a further account of the state of his books and of the funds and other property in his custody, whenever required by the managers;

6. Receive for the use of the institution any and all sums of money which may be due upon any notes or bonds in his hands, belonging to the institution, any and all sums charged and due to the institution for the support of any pupil therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses;

7. Prosecute an action in his name as such treasurer, to recover any sum of money that may be due or owing to the institution;

8. Execute a release and satisfaction of a mortgage, judgment or other lien, in favor of the institution, when paid, so that the same may be discharged from record.

L. 1862, chap. 220.

§ 67. Semi-annual meetings and records of board of managers.—

The board of managers shall maintain an effective inspection of the affairs and management of the institution, for which purpose they shall meet at the institution twice in each year, at such times as the by-laws shall provide. The resident officers shall admit the managers into every part of the institution, and shall exhibit to them on demand the books, papers, accounts and writings belonging to the institution, and shall furnish copies, abstracts and reports whenever required by the managers.

A committee of three managers to be appointed by the board at the annual meeting thereof, shall visit the institution once in every month, and perform such other duties and exercise such other powers as shall be prescribed in the by-laws, or the board may direct. The board shall keep in a bound book, to be provided for the purpose, a fair and full record of all its doings, which shall be open at all times to the inspection of its members, and

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all persons whom the governor and either house of the legislature may appoint to examine the same.

L. 1862, chap. 220.

§ 68. **Manner of receiving pupils.**— There shall be received and gratuitously supported in the institution one hundred and twenty feeble-minded children, as state pupils, who shall be selected from those whose parents or guardians are unable to provide for their support, in equal numbers as far as may be, from each judicial district. Such additional number of feeble-minded children as can be conveniently accommodated shall be received into the institution on such terms as shall be just.

If the number of feeble-minded children admitted shall not equal the capacity of the institution, such additional number of nonteachable idiots may be admitted as can be conveniently accommodated.

Feeble-minded children shall be received into the institution upon the written request of the person by whom they are sent, stating the name in full, age, place of nativity, if known, the town, city or county in which each resides, and whether such child, his parents or guardian, are able to provide for his support, in whole or in part, and if in part only what part, the degree of relationship or other circumstances of connection between him and the person requesting his admission, which statement must be verified by the affidavit of two disinterested persons, residents of the same county as the child and acquainted with the facts and circumstances stated, and certified to be credible by the county judge of the county.

Such judge must also further certify that such child is an eligible and proper candidate for admission to such institution.

Feeble-minded children may also be received into such institution upon the official application of a county superintendent of the poor, or the commissioners of charity of a city of the state having such officers.

In the admission of feeble-minded children, preference shall be given to poor or indigent children over all others, and to such as are able or have parents able to support them only in part, over those who are or who have parents who are able to wholly support such children.

L. 1862, chap. 220.

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§ 69. **Discharge of State pupils and payment of expenses.**—

When the manager shall direct a state pupil to be discharged from the institution, the superintendent thereof may return him to the county from which he was sent, and deliver him to the keeper of the alms-house thereof, and the superintendent of the poor of the county shall audit and pay the actual and reasonable expenses of such return. If any town, county or person is legally liable for the support of such pupil, such expenses may be recovered by action in the name of the county by such superintendent of the poor. If the superintendent of the poor neglect or refuse to pay such expenses on demand, the treasurer of the institution may pay the same and charge the amount to the county; and the treasurer of the county shall pay the same with interest after thirty days, out of any funds in his hands not otherwise appropriated; and the supervisors shall raise the amount so paid as other county charges.

L. 1862, chap. 220.

§ 70. **Expense of clothing State pupils.**— The supervisors of any county from which state pupils may have been received shall cause to be raised annually, while such pupils remain in the institution, the sum of thirty dollars for each pupil, for the purpose of furnishing suitable clothing, which shall be paid to the treasurer of the institution on or before the first day of April.

The superintendent may agree with the parent, guardian or committee of a feeble-minded child, or with any person, for the support, maintenance and clothing of such a child at the institution, upon such terms and conditions as may be prescribed, in the by-laws, or approved by the managers. Every parent, guardian, committee, or other person applying for the admission into the institution of a feeble-minded child who is able, or whose parents or guardians are of sufficient ability to provide for his maintenance therein, shall at the time of his admission, deliver to the superintendent an undertaking, with one or more sureties, to be approved by the managers, condition for the payment to the treasurer of the institution of the amount agreed to be paid for the support, maintenance and clothing of such feeble-minded child, and for the removal of such child from the institution without expense thereto, within twenty days after the service of the notice hereinafter provided. If such child, his parents or guardians are of sufficient ability to pay only a part of the expense of supporting

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and maintaining him, such undertaking shall be only for his removal from the institution as above mentioned; and the superintendent may take security by note or other written agreement, with or without sureties, as he may deem proper, for such part of such expenses as such child, his parents or guardians are able to pay, subject, however, to the approval of the managers in the manner that shall be prescribed in the by-laws. Notice to remove a pupil shall be in writing, signed by the superintendent and directed to the parents, guardians, committee or other person upon whose request the pupil was received at the institution, at the place of residence mentioned in such request, and deposited in the post-office at Syracuse with the postage prepaid.

If the pupil shall not be removed from the institution within twenty days after service of such notice, according to the conditions of the agreement and undertaking, he may be removed and disposed of by the superintendent as herein provided, in relation to state pupils, and the provisions of this article respecting the payment and recovery of the expenses of the removal and disposition of a state pupil, shall be equally applicable to expenses incurred under this section.

L. 1862, chap. 220.

ARTICLE V.

STATE CUSTODIAL ASYLUM FOR FEEBLE-MINDED WOMEN.

§80. Established as a corporation.

§82. Officers.

§81. Board of managers.

§83. Treasurer to give undertaking.

§ 80. **Established as a corporation.**—The asylum established at Newark, Wayne county, for feeble-minded women is hereby continued as a body corporate and shall be known as the State Custodial Asylum for Feeble-Minded Women.

L. 1885, chap. 281, § 1 (R. S. [8th ed.] 2145), without change in substance.

§ 81. **Board of managers.**—Such asylum shall continue to have a board of nine managers, three of whom shall be women, and shall be appointed by the governor, by and with the consent of the senate, for six years, except appointments to fill vacancies, which shall be for the unexpired term. The board of managers shall have the custody and control of all property and power to make all rules for the management and control of the effects of the asylum.

L. 1885, chap. 281.

§ 82. **Officers.**—The board of managers shall appoint, of their number, a president, a secretary and a treasurer. They shall appoint a superintendent, a matron, and employ all assistants that may be necessary for the proper management of the asylum.

L. 1885, chap. 281.

§ 83. **Treasurer to give undertaking.**—The treasurer shall, before he receives any money, give an undertaking to the people of the state, with such sureties and in such amount as the board of managers shall require and to be approved by the comptroller, to the effect that he faithfully perform his trust as such treasurer.

L. 1885, chap. 281.

ARTICLE VI.

ROME STATE CUSTODIAL ASYLUM.

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| §90. Asylum for unteachable idiots. | §93. Superintendent, qualifications, |
| §91. Appointment of managers. | powers and duties. |
| §92. Powers and duties of managers. | §94. Commitments to asylum, main-
tenance. |

§ 90. **Asylum for unteachable idiots.**— The asylum established at Rome for the support, maintenance and custody of unteachable idiots is hereby continued and shall be known as the Rome State Custodial Asylum.

L. 1895, chap. 59, § 1.

§ 91. **Appointment of managers.**— Such asylum shall be under the control and management of a board of eleven managers, appointed by the governor, by and with the advice and consent of the senate, and whose term of office shall be six years.

The managers now in office shall hold their offices until the expiration of the terms for which they were respectively appointed, or until their successors are appointed and have qualified. They may be removed by the governor, upon charges preferred against them in writing, after an opportunity given them to be heard thereon.

They shall appoint one of their number as president and another as secretary.

L. 1895, chap. 59, § 2.

§ 92. **Powers and duties of managers.**— The board of managers shall,

1. Have the general direction and control of all the property and concerns of the asylum, take charge of its general interests and see that its design is carried into effect, according to law, and its by-laws, rules and regulations.

2. Establish by-laws, rules and regulations, subject to the approval of the state board of charities, for the internal government, discipline and management of the asylum.

3. Maintain an effective inspection of the asylum for which purpose, a majority of the managers shall visit the asylum at

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least once in every three months, and at such other times as may be prescribed in the by-laws.

The superintendent or other officer in charge shall admit such managers into every part of the asylum and its buildings and exhibit to them on demand all the books, accounts and writings belonging to the asylum and pertaining to its interest, and furnish copies, abstracts and reports whenever required by them.

4. Annually report to the legislature for the preceding fiscal year, the affairs and conditions of the asylum, with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvements, betterments or other necessary objects.

5. If lands are required for the use of the asylum, acquire the same by purchase, gift or condemnation.

L. 1895, chap. 59.

§ 93. **Superintendent, qualifications, powers and duties.**—The superintendent shall be a resident of this state, a well educated physician and a graduate of an incorporated medical college, of at least five years actual experience in an institution for the cure and treatment of the insane. He shall be the chief executive officer of the asylum, and shall manage the institution in conformity to rules and regulations adopted by the board of managers. He shall appoint the assistant physicians, steward, clerk, a bookkeeper, matron and all subordinate employes and he may discharge them, when, in his judgment, it may be necessary to do so, for the good of the institution.

L. 1895, chap. 59, § 3, in part.

§ 94. **Commitments to asylum; maintenance.**—The superintendents of the poor of the various counties of the state, may commit to such asylum, if vacancies exist therein, such unteachable idiots residing in their respective counties, who are indigent or inmates of county alms-houses, according to the by-laws and regulations of the asylum. All commitments shall be in the form prescribed by the board of managers. Insane idiots or epileptics shall not be committed to such asylum.

Unteachable idiots other than the poor and indigent may be admitted to the asylum, if vacancies exist, after providing for the care and custody of the poor and indigent idiots, at a rate which

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shall not exceed the weekly per capita cost of maintaining all inmates as determined yearly by the board of managers.

The maintenance of the institution and the poor and indigent inmates thereof shall be a charge upon the state.

L. 1895, chap. 59, all am'd by L. 1904, c. 462.

ARTICLE VII.

THE CRAIG COLONY FOR EPILEPTICS.

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| §100. Establishment and objects of colony. | §108. Duties of treasurer. |
| §101. Managers of the colony. | §109. Designation and admission of patients. |
| §102. Buildings and improvements. | §110. Support of state patients. |
| §103. Powers and duties of managers. | §111. Apportionment of state patients. |
| §104. Annual report; state board of charities. | §112. The support of private patients. |
| §105. Donations in trust. | §113. Discharge of patients. |
| §106. Officers of the colony. | §114. Notice of opening of colony. |
| §107. Duties of the superintendent. | |

§ 100. **Establishment and objects of colony.**—The colony for epileptics established at Sonyea, Livingston county, is hereby continued, and shall be known as the Craig Colony for Epileptics, in honor of the late Oscar Craig, of Rochester, New York, whose efficient and gratuitous public services in behalf of epileptics and other dependent unfortunates, the state desires to commemorate.

The objects of such colony shall be to secure the humane, curative, scientific and economical care and treatment of epileptics, exclusive of insane epileptics.

L. 1894, chap. 363.

§ 101. **Managers of the colony.**—There shall be a board of twelve managers of the Craig colony, all of whom shall be citizens of the state, appointed by the governor, by and with the advice and consent of the senate, one from each judicial district and one additional member from each of the fifth, sixth, seventh and eighth judicial districts. The term of office of each manager hereafter appointed to succeed a manager whose term has expired shall be three years, and the term of office of four of such managers shall expire annually. The managers in office when this chapter takes effect shall continue in office until the expiration of the term for which they were appointed and until their successors are appointed and have qualified. Appointments to fill vacancies occurring by death, removal or resignation, shall be made without unnecessary delay for the unexpired term. Failure of any manager to attend in each year the whole of two stated meetings of the board, shall be a sufficient cause for removal by the governor.

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Any manager may be removed by the governor upon written charges preferred against him, after an opportunity to be heard in his defense. The managers shall receive no compensation for their services, but shall be allowed their reasonable traveling and official expenses, to be paid as other charges against the institution.

L. 1894, chap. 363.

§ 102. **Buildings and improvements.**—The board of managers shall put the premises conveyed to the state for the use of the colony into proper condition for the reception of patients, and shall receive patients gradually and as rapidly as the condition of the colony will admit. They shall utilize all buildings and improvements on the lands so conveyed, and construct such additional buildings and make further improvements upon plans adopted by them and approved by the state board of charities, and for which appropriations are made by the legislature.

There shall be provided for such colony an abundant supply of wholesome water, sufficient means for drainage and the disposal of sewage, and a proper sanitary system. All of which shall be done under the direction of the board of managers in accordance with plans adopted by them, and approved by the state board of charities.

L. 1894, chap. 363.

§ 103. **Powers and duties of managers.**—Six members of the board of managers shall constitute a quorum for the transaction of business. The board shall:

1. Elect from their number a president and secretary, and may adopt a seal for the use of the colony.

2. Have the government, direction and control of the patients, officers and employes of the colony, and of all the property and concerns thereof.

3. Purchase supplies for the use of the colony and such raw materials as may be necessary for the trades and industries pursued therein, and provide for the disposal of the manufactured products and the product of the land.

4. Employ the assistants necessary for the government of the colony, and to educate and properly use the labor of the patients.

5. Establish such by-laws, rules and regulations as they may deem necessary regulating the appointment, powers and duties of officers, teachers, attendants and assistants, fixing the condition of

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admission, treatment, education, support, custody, discipline and discharge of patients, conducting in a proper manner the business of the colony, and regulating the internal government, discipline and management of the colony. [*Thus amended by L. 1898, chap. 359.*]

6. Maintain an effective inspection of the affairs and management of the colony, for which purpose they shall meet at the institution at least four times each year and at such other times as the by-laws shall prescribe. Their annual meeting shall be held on the second Tuesday of October.

7. Appoint at its annual meeting, a committee of three managers, who shall visit the colony at least once in every month, and perform such other duties and exercise such other powers as are prescribed in the by-laws or directed by the board.

8. Copy in a bound book, a fair and full record of all its proceedings, which shall be open at all times to the inspection of its members and officers of the state board of charities, and all persons whom the governor or either house of the legislature may appoint to examine the same.

L. 1894, chap. 363.

§ 104. **Annual report; State board of charities.**—The board of managers of the Craig colony shall annually, on or before the first day of November, for the preceding fiscal year, report to the state board of charities the affairs and conditions of the colony, with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvement, betterments or other necessary objects, as also for the erection of additional buildings needed by reason of overcrowding, and in order to prevent the same, or to meet the need of sufficient accommodations for patients seeking admission to the colony; and the state board of charities shall, in its annual report to the legislature, certify what appropriations are, in its opinion, necessary and proper. The said colony shall be subject to the visitation and to the general powers of the state board of charities.

L. 1894, chap. 363.

§ 105. **Donations in trust.**—The managers may take and hold in trust for the state any grant or devise of land, or any gift or

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bequest of money or other personal property, or any donation, to be applied, principal or income, or both, to the maintenance and education of epileptics and the general uses of the colony.

L. 1894, chap. 363.

§ 106. **Officers of the colony.**—The board of managers shall appoint a superintendent of the colony, who shall be a well-educated physician and a graduate of a legally chartered medical college, with an experience of at least five years in the actual practice of his profession, and who shall be certified as qualified by the civil service commission, after a competitive examination; and a treasurer, who shall reside in the county of Livingston, and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and form and with such sureties as the comptroller shall approve. Such officers may be discharged or suspended at any time by such board, in its discretion. The superintendent shall constantly reside in the colony. The board shall determine the annual salaries and allowances of the superintendent, steward and matron, not exceeding, in addition to maintenance supplies, the following sums for salaries: Four thousand dollars to the superintendent; fifteen hundred dollars to the steward; one thousand dollars to the matron; and the board shall determine the annual salary of the treasurer of the colony, not exceeding fifteen hundred dollars. Such salaries and allowances shall be paid quarterly, on the first day of October, January, April and July, each year, by the treasurer of the colony, on presentation of bills therefor, audited, allowed and certified, as prescribed in the by-laws.

L. 1894, chap. 363, and by L. 1905, chap. 459.

§ 107. **Duties of the superintendent.**—The superintendent shall be the chief executive officer of the colony, and subject to the supervision and control of the board of managers; he shall:

1. Oversee and secure the individual treatment and personal care of each and every patient of the colony while resident therein and the proper oversight of all the inhabitants thereof.

2. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same.

3. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and

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economy in any department of labor or education or treatment of patients.

4. Appoint a steward and a matron and employ a bookkeeper and such teachers, assistants and attendants as he may think necessary to economically and efficiently carry into effect the design of the colony; prescribe their duties and places, and, subject to the approval of the board of managers, fix their compensation. The steward and matron shall reside in the colony.

5. Maintain salutary discipline among all employes, patients and inhabitants of the colony, have the custody and control of every patient admitted to the colony until properly discharged, and, subject to the regulations of the managers, restrain and discipline any patient in such manner as he may judge is for the welfare of the patient and the proper conduct of the colony, and enforce strict compliance with his instructions and uniform obedience to all the rules and regulations of the colony. [*Thus amended by L. 1898, chap. 359.*]

6. Cause full and fair accounts and records of the entire business and operations of the colony, with the condition and prospects of the patients, to be kept regularly, from day to day, in books provided for that purpose.

7. See that such accounts and records shall be fully made up to the first days of January, April, July and October, in each year, and that the principal facts and results, with the report thereon, be presented to the board of managers at its quarterly meetings.

8. Conduct the official correspondence of the colony, and keep a record or copy of all letters written by himself and by his clerks and agents, and files of all letters received by him or them.

9. Prepare and present to the board, at its annual meeting, a true and perfect inventory of all the personal property and effects belonging to the colony, and account, when required by the board, for the careful keeping and economical use of all furniture, stores and other articles furnished for the colony.

10. Keep a record of all applications for admission of patients, and enter in a book to be provided and kept for that purpose, at the time of admission of each patient to the colony, a minute, with the date, name, residence of the patient, and of the persons on whose application he is received, with a copy of the application, statement, certificate, and all other papers received relating to such epileptic patient, the originals of which he shall file and

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carefully preserve, and certified copies whereof he shall forthwith transmit to the state board of charities.

L. 1894, chap. 363. § 11 ad L. 1904, chap. 545 and am'd L. 1905, chap. 458.

§ 108. **Duties of treasurer.**—The treasurer, among his other duties, shall:

1. Have the custody of all moneys received on account of the monthly estimates made to the comptroller by the superintendent as provided by this chapter, and all other money, notes, mortgages and other securities and obligations belonging to the colony.

2. Keep a full and accurate account of all receipts and payments, in the form prescribed by the by-laws, and such other accounts as shall be required of him by the managers.

3. Balance all the accounts on his books on the first day of each October, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and within five days thereafter deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting.

4. Render a quarterly statement of his receipts and payments to such auditing committee who shall, in like manner as above, compare, verify, report and certify the result thereof, to the managers at their annual meeting, who shall cause the same to be recorded in one of the books of the colony.

5. Render a further account of the state of his books, and of the funds and other property in his custody, whenever required by the managers.

6. Receive for the use of the colony money which may be paid upon obligation or securities in his hands belonging to the colony; and all sums paid to the colony for the support of any patient therein, or, for actual disbursements made in his behalf for necessary clothing and traveling expenses; and money paid to the colony from any other source.

7. Prosecute an action in the name of the colony to recover money due or owing to the colony, from any source; including the bringing of suit for breach of contract between private patients or their guardians and the managers of the colony.

8. Execute a lease and satisfaction of a mortgage, judgment, lien or other debt when paid.

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9. Pay the salaries of the superintendent, treasurer, matron, steward, and of all the employes of the colony, and the disbursements of the officers and members of the board as aforesaid. The treasurer shall have power to employ counsel, subject to the approval of the board of managers.

10. Deposit all moneys received for the care of private patients and all other revenues of the colony, in a bank designated by the comptroller, and transmit to the comptroller a statement showing the amount so received and deposited and from whom, and for what received, and the dates on which such deposits were made. Such statement of deposit shall be certified by the proper officer of the bank receiving such deposit or deposits. The treasurer shall verify by his affidavit that the sum so deposited is all the money received by him from any source of income for the colony up to the time of the last deposit appearing on such statement. A bank designated by the comptroller to receive such deposits shall, before any such deposit be made, execute a bond to the people of the state in a sum, and with sureties to be approved by the comptroller, for the safe keeping of such deposits.

L. 1894, chap. 393, am'd chap. 459, L. 1905.

§ 109. **Designation and admission of patients.**— There shall be received and gratuitously supported in the colony, epileptics residing in the state, who, if of age, are unable, or, if under age, whose parents or guardians are unable to provide for their support therein; and who shall be designated as state patients. Such additional number of epileptics as can be conveniently accommodated shall be received into the colony by the managers on such terms as shall be just, and shall be designated as private patients. Epileptic children shall be received into the colony only upon the written request of the persons desiring to send them, stating the name, age, place of nativity, if known, the town, city or county in which such children respectively reside, and the ability of their respective parents, or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement in all cases of state patients must be verified by the affidavits of the petitioners and of two disinterested persons, and accompanied by the opinion of a qualified physician, all residents of the same county with the epileptic

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patient, and acquainted with the facts and circumstances stated, and who must be certified to be credible by the county judge or surrogate of the county; and such judge or surrogate must also certify, in each case, that such state patient, in his opinion, is an eligible and proper candidate for admission to the colony. State patients may also be received into the colony upon the official application of a county superintendent of the poor, or of the poor authorities of any city.

It shall be the duty of the superintendent of the poor in every county and of the poor authorities of every city to furnish annually to the state board of charities, a list of all epileptics in their respective jurisdictions, so far as the same can be ascertained, with such particulars as to the condition of each epileptic as shall be prescribed by the said state board. Whenever an epileptic shall become a charge for his or her maintenance on any of the towns, cities or counties of this state, it shall be the duty of all poor authorities of such city, and of the county superintendents of the poor, and of the supervisors of such county, to place such epileptic in said colony. Any parent, guardian or friend of an epileptic child within this state may make application to the poor authorities of any city, or the superintendent of the poor of any county or the board of supervisors or any supervisor of any town, ward or city where such child resides, showing by satisfactory affidavit or other proof that the health, morals, comfort or welfare of such child may be endangered or not properly cared for if not placed in such colony; and thereupon it shall be the duty of such officer or board to whom such application may be made to place such child in said colony. The board of supervisors shall provide for the support of such patients, except those properly supported by the state, and may recover for the same from the parents or guardians of such children. In the admission of patients preference shall always be given to poor or indigent epileptics, or the epileptic children of poor or indigent persons, over all others; and preference shall always be given to such as are able to support themselves only in part, or who have parents able to support themselves only in part, over those who are able or who have parents who are able wholly to furnish such support.

L. 1894, chap. 363.

§ 110. **Support of State patients.**—State patients shall be provided with proper board, lodging, medical treatment, care and

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tuition; and the managers of the colony shall receive for each state patient supported therein a sum not exceeding two hundred and fifty dollars per annum; which payments, if any, shall be made by the treasurer of the state, on the warrant of the comptroller, to the treasurer of the said colony, on his presenting the bill of the actual time and number of patients in the colony, signed and verified by the superintendent and treasurer of the colony and by the president and secretary of its board of managers. The supervisors of any county from which such patients may have been received into the colony shall cause to be raised annually while such patients remain in the colony, the sum of thirty dollars for each of such state patients for the purpose of furnishing suitable clothing, and the same shall be paid to the treasurer of the colony on or before the first day of April of each year.

L. 1894, chap. 363.

§ 111. **Apportionment of State patients.**—Whenever applications are made at one time for admission of more state patients than can be properly accommodated in the colony, the managers shall so apportion the number received, that each county may be represented in a ratio of its dependent epileptic population to the dependent epileptic population of the state, as shown by statistics furnished by the state board of charities.

L. 1894, chap. 363.

§ 112. **The support of private patients.**—The superintendent of the colony may agree with any epileptic who may be of age, or his committee or guardian, or with the parents, guardian or committee, of an epileptic child, or with any person for the entire or partial support, maintenance, clothing, tuition, training, care and treatment of such epileptic in the colony, on such terms and conditions as may be prescribed in the by-laws or approved by the managers. Every patient, guardian, committee or other person applying for the admission into the colony of an epileptic who is, or whose parents or guardians are of sufficient ability to provide for his support and maintenance therein, shall at the time of his admission, execute a bond to the treasurer of the colony with one or more sureties, to be approved by the superintendent and treasurer, in such sum as the managers shall prescribe, to the effect that the obligers will pay to the treasurer of the colony all sums of money at such time or times as shall be so agreed upon, and re-

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move such epileptic from the colony free of expense to the managers within twenty days after the service of the notice hereinafter provided for. If such epileptic, his parents or guardian are of sufficient ability to pay only a part of the expenses of supporting and maintaining him at the institution, such undertaking shall be only for such partial support and maintenance and for removal from the institution as above mentioned; and the treasurer may take security by such obligation or in his discretion by note or other written agreement, with or without sureties, as he may deem proper for such part of such expenses as the epileptic, his parents or guardians are able to pay; but such exercise of discretion shall be with the approval of the superintendent and a committee of the managers in a manner that shall be prescribed in the by-laws. Notice to remove a patient shall be in writing, signed by the superintendent and directed to the epileptic, his parents, guardian, committee or other person upon whose request the patient was received at the colony, at the place of residence mentioned in such request, and deposited in the post-office at Sonyea or any post-office in Livingston county, with the postage prepaid.

L. 1894, chap. 363.

§ 113. **Discharge of patients.**— The superintendent of the colony, with the approval of the managers or of a committee thereof, shall have power to discharge patients, but no epileptic patient shall be returned to any poor-house, directly through a superintendent of the poor, or otherwise. In case a patient, not an epileptic, shall be sent to the colony, through mistaken diagnosis of his disease, or other cause, and there received, such patient shall be returned to and the traveling expenses of such return shall be paid by the person who sent him or her to the colony. Should an epileptic become insane, such patient, if a state patient, shall be sent to the state hospital of the district of which he was a resident just prior to his admission to the colony in the manner prescribed by law. The bills for the reasonable expenses incurred in the transportation of state patients to and from the state hospitals after they have been approved in writing by the state commission in lunacy, shall be paid by the treasurer of the state on the warrant of the comptroller from the funds provided for the support of the state hospitals. In case the relatives, guardians or friends of such an insane patient desire that he become an inmate of any state hospital situated beyond the limits of the district of which

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he was formerly a resident, and there be sufficient accommodations in such state hospital, he shall be received there in the manner provided by law for the transfer of other insane persons. Private patients, who may become insane, shall be committed, as prescribed by law, subject to the regulations of the state commission in lunacy, to such institution for the insane as may be designated by the relatives, guardians or friends of such insane person, all traveling and other expenses of removal to be paid by them. After any patient has been delivered to the managers or officers of such hospital or institution, the care and custody of the managers of the colony over such insane person shall cease; and after any patient shall, as aforesaid, be so certified to be insane as prescribed by law, such patient shall come under the supervision of the state commission in lunacy.

§ 114. **Notice of opening of colony.**— So soon as the colony shall be ready for the reception of patients, it shall be the duty of the board of managers officially to send notice of such fact to the county clerks and the clerks of the boards of supervisors of the respective counties of the state, and the secretary of the state board of charities; and to furnish such clerks of counties and boards of supervisors with suitable blanks for the commitment of epileptics to such colony.

L. 1894, chap. 363, § 115 ad by L. 1902, 356 and am'd by L. 1905, chap. 409.

ARTICLE VIII.

INSTITUTIONS FOR JUVENILE DELINQUENTS.

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| §120. State industrial school; managers. | §126. Discipline and control of inmates. |
| §121. Managers of House of Refuge for Juvenile Delinquents in New York city. | §127. Military drill. |
| §122. Powers and duties of managers. | §128. Transfer of inmates to penitentiary or Elmira Reformatory. |
| §123. Superintendent. | §129. Confinement of juvenile delinquents under sentences by the courts of the United States. |
| §124. Commitment of children. | §130. Effects of alcoholic drinks and narcotics to be taught. |
| §125. Register. | |

§ 120. **State industrial school; managers.**—The State Industrial School, at Rochester, is hereby continued for the reception of all male and female children, under the age of sixteen years, who shall be legally committed to such school as vagrants or on a conviction for any criminal offense by any court having authority to make such commitment.

Such school shall be under the control and management of a board of fifteen managers appointed by the governor, by and with the advice and consent of the senate. Their term of office shall be three years, and they shall be so appointed that the terms of one-third shall expire on the first Tuesday of February in each year. All vacancies shall be filled by the governor and the person appointed to fill a vacancy shall hold office for the remainder of the term of the person whom he succeeds. In the discretion of the governor, persons of either sex may be appointed as managers of such school. Such managers shall serve without compensation. [*Thus amended by L. 1898, chap. 536.*]

L. 1846, chap. 143, § 10, part of § 11, am'd L. 1904, chap. 167.

§ 121. **Managers of house of refuge for juvenile delinquents in New York City.**—The society for the reformation of juvenile delinquents in the city of New York shall continue to be a corporation by the name of “the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York,” with all the powers conferred upon it by its acts of incorporation and the acts amendatory thereof. There shall continue to be thirty

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managers of such society, each of whom shall hold office for the term of three years; and the managers in office when this chapter takes effect shall continue in office for the terms for which they were chosen respectively. The members of such society residing in the city of New York shall annually on the third Monday in November, by a plurality of votes, elect ten managers of such society. If a vacancy shall occur in the office of any manager, the board of managers may appoint a person to fill the vacancy for the remainder of the unexpired term.

L. 1824, chap. 126, am'd L. 1905, chap. 613.

§ 122. **Powers and duties of managers.**— The managers of such house of refuge, established by the society for the reformation of juvenile delinquents, in the city of New York, and of such state industrial school shall have the general control of such institutions and shall make all such rules, regulations, ordinances and by-laws for the government, discipline, employment, management and disposition of the officers thereof, and of the children while in such institution or in the care of such managers, as to them may appear just and proper. They shall appoint a superintendent and such other officers as they may deem necessary for the conduct and welfare of the institution under their charge. They shall report in detail annually to the legislature on or before the fifteenth day of January, the number of children received by them into the institution, the disposition thereof, their receipts and expenditures, their proceedings during the preceding year, and all other matters which they deem advisable to be brought to the attention of the legislature.

L. 1846, chap. 143, part of § 11, § 12 and part of § 13.

§ 123. **Superintendent.**— The superintendent so appointed shall be the chief executive officer of such school, or house of refuge, and subject to the by-laws, rules and regulations thereof and the powers of the board of managers, shall have control of the internal affairs and shall maintain discipline therein and enforce a compliance with, and obedience to, all rules, by-laws, regulations and ordinances adopted by such board for the government, discipline and management of such school or house of refuge.

Under direction of such managers, he shall receive and take

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into such institution all children legally committed thereto by any court having authority to make such commitment.

L. 1846, chap. 143.

§ 124. **Commitment of children.**—Children under the age of sixteen years may be committed from the rural counties of this state as vagrants, or on the conviction of any criminal offense by any court having authority to make such commitments, to the state industrial school or the house of refuge established by the society for the reformation of juvenile delinquents; but such children in the counties of New York and Kings shall be committed to the house of refuge in New York city, established by such society. But no child under the age of twelve years shall be committed or sentenced to either of such institutions for any crime or offense less than felony. The courts of criminal jurisdiction in the several counties shall ascertain by such proof as may be in their power, the age of every delinquent committed to either of such institutions, and insert such age in the order of commitment and the age thus ascertained shall be deemed and taken to be the true age of such delinquent. If the court shall omit to insert in the order of commitment, the age of any delinquent committed to such school or house of refuge the managers shall as soon as may be after such delinquent shall be received by them, ascertain his age by the best means in their power, and cause the same to be entered in a book to be designated by them for that purpose, and the age of such delinquent thus ascertained shall be deemed and taken to be the true age of such delinquent.

L. 1846, chap. 143), part of § 13, am'd L. 1904, chap. 167, § 124-6.

§ 125. **Register.**—Upon the commitment of a delinquent to such industrial school or house of refuge, the superintendent thereof shall cause to be entered in the register kept for that purpose, the date of admission, name, sex, age, place of birth, nationality, residence and such other facts as may be ascertained, relating to the origin, condition, peculiarity or inherited tendencies of such delinquent.

§ 126. **Discipline and control of inmates.**—The managers of the state industrial school shall receive and detain during minority, every delinquent committed thereto in pursuance of law, or to the western house of refuge for juvenile delinquents, or to

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the house of refuge for juvenile delinquents in western New York. The managers of the house of refuge for juvenile delinquents in the city of New York, may receive and detain during minority all delinquents committed thereto. The managers of each institution shall cause the children detained therein or under their care to be instructed in such branches of useful knowledge, and to be regularly and systematically employed in such lines of industry as shall be suitable to their years and capacities, and shall cause such children to be subjected to such discipline, as in the opinion of such board, is most likely to effect their reformation. The managers of each institution, with the consent of any child committed thereto, may bind out as an apprentice or servant, such child during the time they would be entitled to retain him or her, to such persons and at such places to learn such trade and employment as in their judgment will be for the future benefit and advantage of such child.

§ 127. **Military drill.**—The superintendent of the State industrial school, and the superintendent of the house of refuge, established by the society for the reformation of juvenile delinquents, with the approval of the respective boards of managers thereof, may institute and establish a system of rules and regulations for uniforming, equipping, officering, disciplining and drilling in military art, the male inmates of such institutions, and for the exercise and drill of such inmates according to the most approved tactics, such number of hours daily as such superintendent may deem advisable.

L. 1886, chap. 530, § 4, am'd L. 1904, chap. 167.

§ 128. **Transfer of inmates to penitentiary or Elmira reformatory.**—If a delinquent confined in the State industrial school or the house of refuge established by the society for the reformation of juvenile delinquents is guilty of attempting to set fire to any building belonging to either of such institutions, or to any combustible matter for the purpose of setting fire to any such building, or of openly resisting the lawful authority of an officer thereof, or of attempting to excite others to do so, or shall by gross or habitual misconduct exert a dangerous or pernicious influence over the other delinquents, the board of managers of the institution wherein such case arises shall submit a written statement of the facts to a justice of the supreme court, or, if the

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case arises within the state industrial school, to the county judge of the county of Monroe, and apply to him for an order authorizing a temporary confinement of such delinquent, in the Monroe county penitentiary, or if over sixteen years of age, in the Elmira reformatory; and if the case arises within the house of refuge, established by the society for the reformation of juvenile delinquents in the city of New York, in the county jail or penitentiary of the county of New York, or if the delinquent be over sixteen years of age, to the Eastern New York reformatory, when completed, and until then to the Elmira reformatory. Such judge shall forthwith inquire into the facts, and if it appear that the statement is substantially true, and that the ends desired to be accomplished by the institution wherein the case has arisen will be best promoted thereby, he shall make an order authorizing the confinement of such delinquent in such penitentiary, county jail or reformatory for the limited time expressed in the order, and the keeper or superintendent of such penitentiary, county jail or reformatory shall receive such delinquent and detain him during the time expressed in such order. At the expiration of the time limited by such order, or sooner, if the board of managers of either of such institutions shall direct, the superintendent or keeper of such reformatory, county jail or penitentiary shall return such delinquent to the custody of the superintendent of the institution from which such delinquent shall have been received.

L. 1861, chap. 506, as amended by L. 1891, chap. 375.

§ 129. **Confinement of juvenile delinquents under sentences by the courts of the United States.**—The superintendents of the house of refuge, established by the society for the reformation of juvenile delinquents in the city of New York, and the state industrial school at Rochester, shall receive and safely keep in their respective institutions, subject to the regulations and discipline thereof, and the provisions of this article, any criminal under the age of sixteen years convicted of any offense against the United States, under sentences of imprisonment by any court of the United States, sitting within this state, until such sentences be executed, or until such delinquent shall be discharged by due course of law, conditioned upon the United States supporting such delinquent and paying the expenses attendant upon the execution of such sentence.

L. 1853, chap. 608, am'd L. 1904, chap. 167

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§ 130. **Effects of alcholic drinks and narcotics to be taught.**—The nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught in the schools connected with such house of refuge established by the society for the reformation of juvenile delinquents in the city of New York and in the State Industrial School at Rochester, for not less than four lessons a week for ten or more weeks in each year. All pupils who can read shall study this subject from suitable text-books, but pupils unable to read shall be instructed in it orally by teachers using text-books adapted for such oral instruction as a guide and standard, and these text-books shall be graded to the capacities of the pupils pursuing such course of study.

Chap. 1041 of L. 1895.

REMOVAL OF STATE INDUSTRIAL SCHOOL.

L. 1899, chap. 167 — An act to provide for the removal of the State Industrial School and making an appropriation therefore. (Became a law March 30, 1899.)

Section 1. The president and committee on reformatories of the state board of charities and the president and executive committee of the board of managers of the State Industrial School, are hereby constituted a commission, whose duty it shall be to select a suitable tract of land in the county of Monroe, to which the State Industrial School may be removed.

ARTICLE VIIIa.

PENAL CODE PROVISIONS RELATING TO THE COMMITMENT OF CHILDREN TO INSTITUTIONS.

§ 291. **Children not to beg, etc.—Commitment.**—Any child actually or apparently under the age of sixteen years who is found:

1. Begging or receiving or soliciting alms, in any manner or under any pretense; or gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or

2. Not having any home or other place of abode or proper guardianship; or who has been abandoned or improperly exposed or neglected, by its parents or other person or persons having it in charge, or being in a state of want or suffering; or

3. Destitute of means of support, being an orphan, or living or having lived with or in custody of a parent or guardian who has been sentenced to imprisonment for crime, or who has been convicted of a crime against the person of such child, or has been adjudged an habitual criminal; or

4. Frequenting or being in the company of reputed thieves or prostitutes, or in a reputed house of prostitution or assignation, or living in such a house either with or without its parents or guardian, or being in concert saloons, dance houses, theaters, museums, or other places of entertainment, or places where wines, malt or spirituous liquors are sold, without being in charge of its parent or guardian; or playing any game of chance or skill in any place wherein or adjacent to which any beer, ale, wine or liquor is sold or given away, or being in any such place; or

5. Coming within any of the descriptions of children mentioned in section two hundred and ninety-two, must be arrested and brought before a proper court or magistrate, who may commit the child to any incorporated charitable, reformatory, or other institution, and when practicable, to such as is governed by persons of the same religious faith as the parents of the child, or may make any disposition of the child such as now is or hereafter may be authorized in the cases of vagrants, truants, paupers or disorderly persons, but such commitments shall, so far as is

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practicable, be made to such charitable or reformatory institutions. Whenever any child shall be committed to any institution under this Code, and the warrant of commitment shall so state, and it shall appear therefrom that either parent or any guardian or custodian of such child was present at the examination before such court or magistrate, or had such notice thereof as was by such court or magistrate deemed and adjudged sufficient, no further or other notice required by any local or special statute, in regard to the committal of children to such institution, shall be necessary, and such commitment shall in all respects be sufficient to authorize such institutions to receive and retain such child in its custody as therein directed.

Whenever any commitment of a child shall for any reason be adjudged or found defective a new commitment of the child may be made or directed by the court or magistrate as the welfare of the child may require. And no commitment of a child which shall recite therein the facts upon which it is based shall be deemed invalid by reason of the omission of the court or magistrate by whom such commitment is made to file any documents, papers or proceedings relating thereto or by reason of any limitation as to the age of the child committed, contained in the act or articles of incorporation of the institution to which it may have been committed.

6. Any magistrate having criminal jurisdiction may commit temporarily to an institution authorized by law to receive children on final commitment, and to have compensation therefor from the city or county authorities, any child under the age of sixteen years who is held for trial on a criminal charge; and may, in like manner, so commit any such child held as a witness to appear on the trial of any criminal case; which institution shall thereupon receive the same, and be entitled to the like compensation proportionally therefor as on final commitment, but subject to the order of the court as to the time of detention and discharge of the child. Any such child convicted of any misdemeanor shall be finally committed to some such institution, and not to any prison, or jail, or penitentiary, longer than is necessary for its transfer thereto. No child under constraint or conviction, actually or apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any court-room, or in any vehicle for transportation in company with adults charged with or convicted of crime. [*Amended; in effect Sept. 1, 1892.*]

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7. All cases involving the commitment or trial of children for any violation of the Penal Code, in any police court or court of special sessions, may be heard and determined by such court, at suitable times to be designated therefor by it, separate and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept. And all such cases and cases of offenses by, or against the person of, a child under the age of sixteen years shall have preference over all other cases before all magistrates and in all courts and tribunals in this state both civil and criminal; and where a child is committed or detained as a witness in any case, such case shall be brought to trial or otherwise disposed of without delay, whether the defendant be in custody or at large on bail. [*Thus amended by L. 1896, chap. 414; in effect April 27, 1896.*]

§ 701. **Commitment to house of refuge.**—Where a person under the age of twelve years is convicted of a crime amounting to felony, or where a person of the age of twelve years and under the age of sixteen years is convicted of crime, or where a male person of the age of sixteen years and under the age of eighteen years is convicted of crime not amounting to felony, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provisions of the statute relating thereto. Where the conviction is had and the sentence is inflicted in the first, second or third judicial district, the place of confinement must be a house of refuge established by the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York; where the conviction is had and the sentence inflicted in any other district, the place of confinement must be in the Western House of Refuge for Juvenile Delinquents. But nothing in this section shall effect any of the provisions contained in section seven hundred and thirteen. [*Thus amended by chap. 554 of L. 1896; in effect May 12, 1896.*]

§ 713. **Sentence of minor.**—When a person under the age of sixteen is convicted of a crime, he may in the discretion of the court, instead of being sentenced to fine or imprisonment, be placed in charge of any suitable person or institution willing to receive him, and be thereafter, until majority or for a shorter term, subjected to such discipline and control of the person or

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institution receiving him as a parent or guardian may lawfully exercise over a minor. A child under sixteen years of age committed for misdemeanor, under any provision of this Code, must be committed to some reformatory, charitable or other institution authorized by law to receive and take charge of minors. And when any such child is committed to an institution, it shall, when practicable, be committed to an institution governed by persons of the same religious faith as the parents of such child.

ARTICLE IX.

HOUSES OF REFUGE AND REFORMATORIES FOR WOMEN.

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| §140. Names and location of houses of refuge and reformatories for women. | §147. Return of females improperly committed. |
| §141. Appointment of managers. | §148. Disposition of children of women so committed. |
| §142. General powers and duties of managers. | §149. Conveyance of women committed. |
| §143. Appointment and removal of officers and employes; compensation. | §150. Detentions and rearrests in case of escapes. |
| §144. General powers of superintendents. | §151. Employment of inmates. |
| §145. Oaths and bonds. | §152. Clothing and money to be furnished discharged inmates. |
| §146. Commitments; papers furnished by committing magistrates. | §153. Board of managers of Bedford reformatory to notify county clerks of completion thereof. |

§ 140. **Name and locations of houses of refuge and reformatories for women.**—The houses of correction for women located at Hudson and Albion are contained and shall be known respectively as the House of Refuge for Women at Hudson, and the Western House of Refuge for Women. The reformatory for women located at Bedford is also continued and shall be known as the New York State Reformatory for Women.

L. 1881, chap. 187, § 1, am'd L. 1904, chap. 453.

§ 141. **Appointment of managers.**—Each such institution shall be under the control of its present board of managers, until others are appointed. Such boards shall consist of six managers to be appointed by the governor, by and with the advice and consent of the senate. All such managers shall be residents of the state, two shall be women and one a physician who has practiced his profession for ten years. The terms of the managers hereafter appointed shall be six years, except that the managers appointed to fill vacancies shall hold office for the unexpired terms of the managers whom they succeed. The term of office of one of such managers shall expire each year. If in any such institution there be less than six managers in office when this act takes effect, the governor shall appoint additional managers to make up the number of six, who shall be so classified by him that the term of one manager shall expire each year. Where the term

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of office of a manager of any such institution expires at a time other than the last day of December in any year, the term of office of his successor is abridged so as to expire on the last day of December, preceding the time when such term would otherwise expire, and the term of office of each manager thereafter appointed shall begin on the first day of January.

The governor may remove any manager, at any time, for cause, on giving to such manager a copy of the charges against him and an opportunity to be heard in his defense.

Such managers shall receive no compensation for their time or services; but the actual expenses necessarily incurred by them in the performance of their official duties shall be paid in the same manner as other expenses of such institution. Nothing contained in this section shall abridge the term of any manager now in office.

§ 142. **General powers and duties of managers.**— Each board of managers shall have the general superintendence, management and control of the institution over which it is appointed; of the grounds and buildings, officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof, and may make such rules and regulations as may seem to them necessary for carrying out the purposes of such institutions.

Am'd L. 1904, chap. 165.

§ 143. **Appointment and removal of officers and employes; compensation.**— The board of managers of each of such institutions shall appoint from among its members a president, secretary and treasurer, who shall hold office for such length of time as such board may determine.

They shall appoint a female superintendent, who shall hold office during the pleasure of the board.

Such boards of managers shall fix the compensation of the officers and employes of the institution under their charge.

L. 1892, chap. 704.

§ 144. **General powers of superintendents.**— The superintendent of each such institution shall, subject to the direction and control of the board of managers thereof:

1. Have the general supervision and control of the grounds

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and buildings of the institution, the subordinate officers and employees and the inmates thereof, and of all matters relating to their government and discipline.

2. Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of managers, as may seem to her proper or necessary for the government of such institution and its officers and employees; and for the employment, discipline and education of the inmates thereof.

3. Exercise such other powers and perform such other duties as the board may prescribe.

Such superintendent shall also have power to appoint and remove all subordinate female officers and employees, subject to the approval of the board.

§ 145. **Oaths and bonds.**— Each manager and superintendent of such institutions shall take the constitutional oath of office and each superintendent shall execute a bond to the people of the state, in the sum of five thousand dollars, with sureties approved by the state comptroller, which shall be filed in the office of the comptroller. The manager appointed as treasurer of such institution shall give a bond for such amount as the comptroller may direct. The comptroller may require other officers of such institutions to give a bond, if, in his opinion, the interests of the state demand it. [*Amended by L. 1900, chap. 49.*]

L. 1881, chap. 187. § 3.

§ 146. **Commitments; papers furnished by committing magistrates.**

Subdivision 1. A female, between the ages of fifteen and thirty years, convicted by any magistrate of petit larceny, habitual drunkenness, of being a common prostitute, of frequenting disorderly houses or houses of prostitution, or of a misdemeanor, and who is not insane, nor mentally or physically incapable of being substantially benefitted by the discipline of either of such institutions, may be sentenced and committed to the House of Refuge for Women at Hudson, or to the Western House of Refuge for Women at Albion, or the New York State Reformatory for Women, at Bedford. The term of such sentence and commitment shall be three years, but such female may be sooner discharged therefrom by the board of managers. Such commit-

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ments to the House of Refuge for Women, at Hudson, until the New York State Reformatory for Women, at Bedford, is completed and ready for the reception of inmates shall be from the first, second, third, fourth, and fifth judicial districts, and the counties of Delaware and Otsego; to the Western House of Refuge, at Albion, from the other counties in the sixth and from the seventh and eighth judicial districts. On the completion of the New York State Reformatory for Women, at Bedford, commitments thereto shall be made from the first judicial district and the counties of Westchester, Kings, Queens, Nassau, Suffolk and Richmond.

2. The board of managers of each such institution shall furnish the several county clerks of the state with suitable blanks for the commitment of women thereto. Such county clerks shall immediately notify the magistrates of their respective counties of the reception of such blanks and that upon application they will be furnished to them.

3. The magistrate committing a female pursuant to this section shall immediately notify the superintendent of the institution to which the commitment is made of the conviction of such female, and shall cause a record to be kept of the name, age, birthplace, occupation, previous commitments, if any, and for what offenses; the last place of residence of such female, and the particulars of the offense for which she was committed. A copy of such record shall be transmitted, with the warrant of commitment, to the superintendent of such institution, who shall cause the facts stated therein, and such other facts as may be directed by the board of managers, to be entered in a book of record.

4. Such magistrate shall, before committing any such female, inquire into and determine the age of such female at the time of commitment, and her age as so determined shall be stated in the warrant. The statement of the age of such female in such warrant shall be conclusive evidence as to such age in any action to recover damages for her detention or imprisonment under such warrant, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment. Thus amended by L. 1899, chap. 632, taking effect May 23, 1899.

Am'd L. 1904, chap. 169.

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§ 147. **Return of females improperly committed.**— Whenever it shall appear to the satisfaction of the board of managers of any such institution, that any person committed thereto is not of proper age to be so committed or is not properly committed, or is insane or mentally incapable of being materially benefitted by the discipline of any such institution, such board of managers shall cause the return of such female to the county from which she was so committed. Such female shall be so returned in the custody of one of the persons employed by such boards of managers to convey to such institutions women committed thereto, who shall deliver her into the custody of the sheriff of the county from which she was committed. Such sheriff shall take such female before the magistrate making the commitment, or some other magistrate having equal jurisdiction in such county, to be by such magistrate resentenceed for the offense for which she was committed to any such institution and dealt with in all respects as though she had not been so committed.

The costs and expenses of the return of such female, necessarily incurred and paid by any such board of managers shall be a charge against the county from which such female was committed, to be paid by such county to such board of managers in the same manner as other county charges are collected.

L. 1892, chap. 704, am'd L. 1904, chap. 169.

§ 148. **Disposition of children of women so committed.**— If any woman committed to any such institution, at the time of such commitment is a mother of a nursing child in her care under one year of age, or is pregnant with child which shall be born after such commitment, such child may accompany its mother to and remain in such institution until it is two years of age and must then be removed therefrom.

The board of managers of any such institution may cause such child to be placed in any asylum for children in this state and pay for the care and maintenance of such child therein at a rate not to exceed two and one-half dollars a week, until the mother of such child shall have been discharged from such institution, or may commit such child to the care and custody of some relative or proper person willing to assume such care.

If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper

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care or guardianship, the magistrate committing such woman shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care.

L. 1892, chap. 704.

SPECIAL ACT RELATING TO HOUSE OF REFUGE FOR WOMEN AT HUDSON.

The following act amends subd. 3 of § 10 of chap. 187 of L. 1881, which was repealed by the State Charities Law, and made a part of the above section. The act having been passed at the same session of the legislature as the State Charities Law, it must be considered as still in effect by virtue of the Statutory Construction Law (L. 1892, chap. 667), § 33, *post*. We have, therefore, inserted the amendatory act at this place.

L. 1896, chap. 587 — An act to amend chapter one hundred and eighty-seven of the laws of eighteen hundred and eighty-one, entitled "An act to provide for the establishment of a house of refuge for women."

[IN EFFECT, May 12, 1896.]

SECTION 1. Subdivision three of section ten of chapter one hundred and eighty-seven of the laws of eighteen hundred and eighty-one, as amended by chapter seventeen of the laws of eighteen hundred and eighty-seven, as amended by chapter seven hundred and four of the laws of eighteen hundred and ninety-two, is hereby amended so as to read as follows:

3. In case any woman committed to said house of refuge shall at the time of such commitment be the mother of a nursing child in her care, under one year of age, or be pregnant with child, which shall be born after such commitment, such child may accompany its mother to, and remain in said house of refuge until such time as in the opinion of said board of managers such child can be properly removed therefrom, and suitably provided for elsewhere; and said board of managers shall in their discretion have power to cause such child or children to be placed in any asylum for children in this state and to pay for the care and maintenance of such child or children at the rate not to exceed two dollars and a half a week, until the mother of such child or children shall have been discharged as hereinbefore provided for, or to commit such child or children to the care and custody of some relative or proper person willing to assume such care. And in case such woman at the time of such commitment shall be the mother of, and have under her exclusive care, a child or children, more than one year of age, and which might otherwise be left without proper care or guardianship, it shall be the duty of such court or magistrate so committing said woman to cause such child or children to be committed to such asylum as may be provided by law for such purpose, or to the care and custody of some relative or proper person willing to assume such care. The board of managers may bind out any child, born at or brought by its mother to the house of refuge, if a male, for a period which shall not be for a period beyond his twenty-first year, and if a female, for a period which shall not be beyond her eighteenth year, which shall have been abandoned by its mother for a period not less than six months, and remaining in the house of refuge, to be a clerk, apprentice or servant by an indenture in writing, which shall be signed by all the managers in the name of the board of managers, and shall be signed also by the person or persons to whom such child shall be so bound out, who shall, in such indenture undertake to treat such child kindly, which binding shall be as effectual as if such child had bound himself or herself with the consent of his or her father or mother.

§ 2. This act shall take effect immediately.

§ 149. **Conveyance of women committed.**—The board of managers of each of such institutions shall employ suitable persons to

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be known as marshals, to convey from the place of conviction to such institution, all woman legally committed thereto, and such marshals shall have the power and authority of deputy sheriffs in respect thereto. All expenses necessarily incurred in making such conveyance shall be paid by the treasurer of the board of managers. In case of the commitment of a woman, who, at the time thereof, is the mother of a nursing child, or is pregnant, the board of managers shall designate a woman of suitable age and character to accompany the person so committed, along with the officer or representative, authorized in this section to be employed by such managers.

L. 1892, chap. 704.

§ 150. **Detentions and rearrests in cases of escapes.**—The board of managers of any such institution may detain therein, under the rules and regulations adopted by them, any female legally committed thereto, according to the terms of the sentence and commitment, and conditionally discharge such female at any time prior to the expiration of the term of commitment.

If an inmate escape or be conditionally discharged from any such institution, the board of managers may cause her to be re-arrested and returned to such institution, to be detained therein for the unexpired portion of her term, dating from the time of her escape or conditional discharge. A person employed by the board of managers of any such institution to convey to such institution, women committed thereto, may arrest, without a warrant, an escaped inmate in any county in this state, and shall forthwith convey her to the institution from which she escaped; and a magistrate may cause an escaped inmate to be arrested and held in custody, until she can be removed to such institution, as in the case of her first commitment thereto.

A person conditionally discharged from any such institution may be arrested and returned thereto, upon a warrant issued by its president and secretary. Such warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to a person employed by such a board of managers to convey to such institutions, women committed thereto, and may be executed by such person in any such county of this state.

L. 1892, chap. 704.

§ 151. **Employment of inmates.**—The board of managers of each institution shall determine the kind of employment for

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women committed thereto and shall provide for their necessary custody and superintendence. The provisions for the safe keeping and employment of such women shall be made for the purpose of teaching such women a useful trade or profession and improving their mental and moral condition.

Such board of managers may credit such women with a reasonable compensation for the labor performed by them, and may charge them with the necessary expenses of their maintenance and discipline, not exceeding the sum of two dollars per week. If any balance shall be found to be due such women at the expiration of their terms of commitment, such balance may be paid to them at the time of their discharge.

To secure the safe keeping, obedience and good order of the women committed to any such institution, the superintendent thereof has the same power as to such women as keepers of jails and penitentiaries possess as to persons committed to their custody.

L. 1892, chap. 704.

§ 152. Clothing and money to be furnished discharged inmates.

— The board of managers of any such institution may, in their discretion, furnish to each inmate of such institution who shall be discharged therefrom, necessary clothing, not exceeding twelve dollars in value, or if discharged between the first day of November and the first day of April to the value of not exceeding eighteen dollars, and ten dollars in money, and a ticket for the transportation of one person from such institution to the place of the conviction of such inmate, or to such other place as such inmate may designate, at no greater distance from such institution than the place of conviction.

L. 1892, chap. 704.

§ 153. Board of managers of Bedford reformatory to notify county clerks of completion thereof.— As soon as the Bedford Reformatory for Women is completed and ready for the reception of inmates, the board of managers thereof shall notify the county clerks of Westchester and New York counties and furnish such clerks with suitable blanks for the commitment of women to such institution. Such county clerks, on the reception of such notification, shall transmit a copy thereof to the several magistrates of such counties.

L. 1892, chap. 637.

ARTICLE X.

THOMAS ASYLUM FOR ORPHAN AND DESTITUTE INDIAN CHILDREN.

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|---------------------------------------|--|
| §160. Establishment of asylum. | §164. Superintendent, powers and duties. |
| §161. Board of managers. | |
| §162. Powers and duties of the board. | §165. Treasurer, powers and duties. |
| §163. Officers; salaries. | |

§ 160. **Establishment of asylum.**—The Thomas Asylum for Orphan and Destitute Indian Children, established on the Cattaraugus reservation in the county of Erie, is hereby continued.

Such asylum may sue and be sued in the corporate name of “Thomas Asylum for Orphan and Destitute Indian Children,” and service of process and papers may be made upon the superintendent or any manager of such asylum.

L. 1895, chap. 38.

§ 161. **Board of managers.**—Such asylum shall be under the control and management of a board of managers, consisting of ten members, three of whom shall be Seneca Indians. Such managers and their successors shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold their office for six years, and until others are appointed in their stead, subject to removal for cause by the governor. If any manager fails, without being excused by vote of the board, for one year, to attend the regular meeting of the board of which he is a member, his office shall become vacant. A certificate of every such failure shall forthwith be transmitted by the board to the governor, and all vacancies caused by removal or expiration of office or otherwise shall be filled by the governor, by and with the consent of the senate.

L. 1895, chap. 38.

§ 162. **Powers and duties of board of managers.**—The board of managers shall have the general direction and control of all the property and concerns of such asylum, not otherwise provided for by law. They may acquire and hold, in the name of and for the people of the state of New York, property, by grant, gift, devise or bequest, except reservation lands, which may be held

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by those managers who are Seneca Indians, to be applied to the maintenance of orphan and destitute Indian children, and the general use of the asylum. They shall not receive any compensation for their services, but shall receive actual and necessary traveling expenses for attending the regular meetings of the board, as prescribed by the by-laws of said asylum. They shall:

1. Adopt, with the approval or consent of the state board of charities, by-laws for the regulation and management of said asylum, and regulating the appointment and duties of officers, assistants and employes of the asylum, and ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the same.

2. Take care of the general interests of the asylum, and see that its design is carried into effect according to law, and its by-laws, rules and regulations. They shall, on application, receive destitute and orphan Indian children from any of the several reservations located within this state, and shall furnish them such care, moral training, and education, and such instruction in husbandry, and the arts of civilization as shall be prescribed by their by-laws, rules and regulations.

3. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor, the state board of charities or any person appointed to examine the same by the governor, the state board of charities, or either house of the legislature.

4. Maintain an effective inspection of the asylum, for which purpose a committee of the board, consisting of at least four members thereof, shall visit the asylum at least bi-monthly and the whole board at least twice a year, and at such other times as may be prescribed by the by-laws.

5. Enter in a book kept by them for that purpose, the date of each visit, the condition of the asylum and the children therein, and its property, and all such managers present shall sign such entries.

6. Make, annually, on or before the fifteenth day of January, a report to the legislature of the condition of said asylum, including a true account, in detail, of the receipts and disbursements of all moneys that shall come into their hands, or under their control, the number, age, and sex of such destitute orphan children in said asylum, with the name of the reservation to which they belong, and the proportion of the year each has been maintained

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and instructed in said asylum, and such suggestions and recommendations as they may deem proper, or which may be required of them by the state board of charities.

L. 1895, chap. 38.

§ 163. **Officers; salaries.**—Such board shall appoint for the asylum, as often as necessary, and for cause, after an opportunity to be heard, remove:

1. A superintendent, a matron, and a well-educated physician, who shall be a graduate of an incorporated medical college.

2. A treasurer, who shall give a bond to the people of the state for the faithful performance of his trust, with such sureties and in such amount as the comptroller of the state shall approve.

The superintendent, matron, and other assistants shall constantly reside in the asylum, or on the premises, and shall be designated the resident officers of the asylum. The physician shall visit said asylum at such times, and perform such duties as shall be prescribed by the by-laws, rules and regulations of the asylum. Such board shall also, from time to time, with the approval of the stateboard of charities, fix the annual salaries and allowances of such officers. Such salaries shall be paid in equal monthly installments by the treasurer on the warrant of the board of managers, countersigned by the superintendent thereof, and certified as correct.

L. 1895, chap. 38.

§ 164. **Superintendent, powers and duties.**—The superintendent shall be the chief executive officer of such asylum, and in his absence or sickness, the matron shall perform the duties, and be subject to the responsibilities of the superintendent. Subject to the by-laws, rules and regulations established by the board of managers, such officer shall have the general superintendence of the buildings, grounds and farm, together with their furniture, fixtures and stock, and shall:

1. Daily ascertain the condition of all the children and prescribe their conduct.

2. Appoint, with the approval of the board of managers, the other resident officers, assistants and employees not otherwise provided for, that he may think necessary for the economical and efficient performance of the business of the asylum, and prescribe their duties, and he may discharge them at his discretion.

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3. Cause full and fair accounts and records of all his doings, and of the entire business and operation of the asylum to be kept regularly, from day to day, in books provided for that purpose.

4. See that all such accounts and records are justly made up for the annual report to the legislature, as required by this act, and present the same to the board of managers, who shall incorporate them into their report to the legislature.

5. Keep in a book, in which he shall cause to be entered, at the time of the reception of any child, his name, age, residence, and the names of his parents (if any), to what reservation and tribe he belongs, and the date of such reception, and by whom brought, and the condition of the general health of such child.

L. 1895, chap. 38.

§ 165. **Treasurer, powers and duties.**— The treasurer shall have the custody of all moneys, obligations and securities belonging to the asylum. He shall:

1. Open with some good and solvent bank, conveniently near the asylum, an account in his name as such treasurer, and deposit all moneys, upon receiving the same, therein, and draw from the same in the manner prescribed by the by-laws, specifying the object of payment.

2. Keep a full and accurate account of all receipts and payment in the manner directed by the by-laws, and such other accounts as the board of managers shall prescribe, render a statement to the board of managers whenever required by them.

L. 1895, chap. 38.

§ 165a. **Transfer of Indian children to other institutions.**— Whenever the number of Indian children in the Thomas Asylum for Orphan and Destitute Indian Children, on the Cattaraugus Reservation duly admitted thereto, shall be in excess of its proper capacity of the applications for admission of such Indian children to such asylum shall exceed its proper accommodations therefor, or whenever, in the opinion of the trustees of such asylum, the comfort and well-being of any such Indian children therein will likely be promoted by their removal to other asylums, hospitals or institutions for the custody, care and treatment of orphan, dependent or sick children, they may, with the approval of the state board of charities, contract with the managers or other authorities of such asylums, hospitals or institutions as they may

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deem desirable for the reception, care and treatment of such Indian children, as may, from time to time, be transferred thereto, at a fixed weekly per capita rate not exceeding two dollars, except in the case of sick children requiring hospital treatment and care, when the fixed weekly per capita rate shall not exceed three dollars. The sum of two thousand dollars or so much thereof as may be necessary is hereby appropriated out of the moneys in the state treasury, not otherwise appropriated, for the purpose of this act.

ARTICLE XI.

LAWS REPEALED; WHEN TO TAKE EFFECT.

§170. Laws repealed.

§171. When to take effect.

§ 170. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 171. **When to take effect.**— This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter.	SECTIONS.
1846.....	143.....	All.
1850.....	24.....	All.
1851.....	502.....	All.
1852.....	387.....	All.
1853.....	159.....	All.
1853.....	608.....	All.
1855.....	163.....	All.
1861.....	306.....	All.
1862.....	220.....	All.
1867.....	739.....	All.
1867.....	951.....	All.
1873.....	571.....	All.
1875.....	228.....	All.
1878.....	72.....	All.
1879.....	109.....	All.
1881.....	187.....	All.
1885.....	281.....	All.
1886.....	539.....	All.
1888.....	404.....	All.
1890.....	238.....	All.
1891.....	51.....	All.
1891.....	216.....	All.
1891.....	375.....	All.
1892.....	637.....	All. except § 5.
1892.....	704.....	All.
1893.....	635.....	All.
1894.....	363.....	All.
1895.....	13.....	All.
1895.....	38.....	All, except § 9.
1895.....	59.....	All.
1895.....	253.....	All.
1895.....	439.....	All.
1895.....	771.....	All.

MISCELLANEOUS ACTS RELATING TO STATE CHARITABLE INSTITUTIONS.

- ARTICLE 1. Care of aged, decrepit and mentally enfeebled persons who are not insane.
II. Acquisition of lands by condemnation for the benefit of state charitable institutions.
III. Guardianship of indigent and pauper children by charitable institutions and adoption therefrom.

ARTICLE I.

CARE OF AGED, DECREPIT AND MENTALLY ENFEEBLED PERSONS WHO ARE NOT INSANE.

L. 1896, Chap. 914 — An Act to provide for the care of aged, decrepit and mentally enfeebled persons who are not insane.

[IN EFFECT MAY —, 1896.]

§ 1. **Supervision of State board of charities.**— It shall be lawful for the state board of charities, within ten days after the passage of this act, to exercise supervision over all aged, decrepit and feeble-minded persons who are not proper subjects for care and treatment in a hospital for the insane, but who, on application by themselves, or by their relatives, or if without relatives, then by their friends or legal guardians, seek to obtain admission into any homes, retreats, or other asylums which may be authorized under the provisions of this act, to receive and administer to their necessities in a safe and human manner.

§ 2. **License of homes, retreats and asylums by State board of charities.**— The State board of charities, in the exercise of such official supervision, is hereby empowered to license any home, retreat, or other asylum devoted to the sole purpose of keeping and caring for such aged, decrepit or mentally enfeebled persons whenever in the judgment of said board such home, retreat or asylum possesses the necessary equipment in officers and attendants, together with suitable domestic accommodations in all other respects, for the safe and humane maintenance of such patients. And the

Care of aged persons, who are not insane.

power of exercising supervision over such institutions by the state board of charities, and of visiting and inspecting them and their inmates at all times, shall be the same as now belongs to them in respect to the other institutions under their care.

§ 3. **Entrance to licensed institution.**— Any person not a minor may voluntarily enter such a licensed institution upon filing an application of his intention with the superintendent thereof, supported by the affidavits of two reputable physicians of the places of residents of such person, certifying to the act that the said applicant, though aged, decrepit or mentally enfeebled, is not insane nor a proper subject for treatment in a hospital for the insane, and that he goes there with the consent of his relatives friends, or legal guardians.

§ 4. **Application made by relative, friend or guardian.**— In case such applicant be incompetent to act for himself, a similar application may be made in his behalf by any relative, friend or legal guardian in whose charge, or by whose assistance he is maintained, and the superintendent of such institution is hereby authorized to receive him in like manner as above stated.

§ 5. **Discharge of patient.**— Any patient upon application made to the state board of charities by him, or his friends or legal guardians, may be discharged from any such home, retreat or asylum, and placed in charge of his friends or other suitable place as the said board, in their judgment, may deem best.

§ 6. This act shall take effect immediately.

ARTICLE II.

ACQUISITION OF LANDS BY CONDEMNATION FOR THE BENEFIT OF STATE CHARITABLE INSTITUTIONS.

L. 1896, chap. 589 — An act to authorize the state commissions or boards to acquire land by condemnation, and to amend the code of civil procedure relating to condemnation proceedings.

[IN EFFECT MAY 12, 1896.]

§ 1. **Authority granted; proceedings, how instituted.**— The people of the state of New York and the several commissions or boards, boards of managers or trustees in charge or having control of any of the charitable or other institutions of the state, are hereby authorized to acquire under the provisions of title one of chapter twenty-three of the code of civil procedure, known as the condemnation law, such real estate, right or interest therein, as may be necessary for the uses of the state or for the construction, maintenance and accommodation of such state institutions if unable to agree with the owner thereof for its purchase. Unless otherwise provided by law, the proceedings for the purpose of acquiring such real estate, right or interest therein, shall be instituted and maintained in the name of the people of the state of New York, by the attorney-general or by such counsel as the governor or attorney-general may designate for that purpose, upon the certificate of such commission or board as to the necessity of acquiring such real estate, right or interest therein, approved and indorsed by the governor.

§ 2. Section thirty-three hundred and fifty-eight of the code of civil procedure is hereby amended so as to read as follows:

§ 3358. The term “person,” when used herein, includes a natural person and also a corporation, joint-stock association, the state and a political division thereof, and any commission, board, board of managers or trustees in charge or having control of any of the charitable or other institutions of the state; the term “real property,” any right, interest or easement therein or appurtenances thereto; and the term “owner,” all persons having any estate,

Acquisition of land for benefit of state charitable institutions.

interest or easement in the property to be taken, or any lien, charge, or incumbrance thereon. The person instituting the proceedings shall be termed the plaintiff; and the person against whom the proceeding is brought, the defendant.

§ 3. Subdivision one of section thirty-three hundred and sixty of the code of civil procedure is hereby amended so as to read as follows:

1. His name, place of residence, and the business in which engaged; if a corporation or joint-stock association, whether foreign or domestic, its principal place of business within the state, the names and places of residence of its principal officers, and of its directors, trustees or board of managers, as the case may be, and the object or purpose of its incorporation or association; if a political division of the state, the names and places of residence of its principal officers; and if a state or any commission or board of managers or trustees in charge or having control of any of the charitable or other institutions of the state, the name, place of residence of the officer acting in its or their behalf in the proceedings.

§ 4. This act shall take effect immediately.

ARTICLE III.

GUARDIANSHIP OF INDIGENT AND PAUPER CHILDREN BY CHARITABLE INSTITUTIONS AND ADOPTION THEREFROM.

L. 1884, chap. 438 — An act to revise and consolidate the statutes of the state relating to the custody and care of indigent and pauper children by orphan asylums and other charitable institutions.

§ 1. **Guardianship of indigent children may be committed to any incorporated orphan asylum.**— The guardianship of the person and the custody of any indigent child may be committed to any incorporated orphan asylum or other institution incorporated for the care of orphan, friendless or destitute children, by an instrument in writing signed by the parents of such child, if both such parents shall then be living, or by the surviving parent, if either parent of such child be dead, or if either one of such parents shall have, for the period of six months then next preceding, abandoned such child, by the other of such parents, or if the father of such child shall have neglected to provide for his family during the six months then next preceding, or if such child be a bastard, by the mother of such child; or if both parents of such child shall then be dead, by the guardian of the person of such child, legally appointed, with the approval of the court or officer which appointed, such guardian to be entered of record; or if both parents of such child shall then be dead and no legal guardian of the person of such child shall have been appointed, and no guardian of such child shall have been appointed by a last will and testament, or by a deed by either parent thereof, or if the parents of such child shall have abandoned such child for the period of six months then next preceding, by the mayor of the city or by the county judge of the county in which such asylum or such other institution shall be locate, upon such terms, for such time, and subject to such conditions as may be agreed upon by the parties to such written instrument. And such written instrument may provide for the absolute surrender of such child to such corporation. But no such corporation shall draw or receive money from public

Guardianship of indigent children, etc.

funds for the support of any such child committed under the provisions of this section, unless it shall have been determined by a court of competent jurisdiction that such child has no relative, parent or guardian living, or that such relative, parent or guardian, if living, is destitute and actually unable to contribute to the support of such child.

§ 2. **Children not to be sent to county poor-house, etc.**—It shall not be lawful for any county superintendent or overseer of the poor, board of charity or other officer, to send any child between the ages of two and sixteen years, as a pauper, to any county poor-house or alms-house for support and care, or to detain any child between the ages of two and sixteen years in such poor-house or alms-house; but such county superintendents, overseers of the poor, boards of charities or other officers shall provide for such child or children, in families, orphan asylums, hospitals, or other appropriate institutions, as provided by law. The boards of supervisors of the several counties of the state are hereby directed to take such action in the matter as may be necessary to carry out the provisions of this section. When any such child shall be so provided for or placed in any orphan asylum or such other institution, such child shall, when practicable, be so provided for or placed in such asylum or such other institution as shall then be controlled by persons of the same religious faith as the parents of such child.

This section is in effect superseded by Poor Law, § 56, *ante*, p. 51.

§ 3. **Record to be kept by all institutions for reception of minors, etc.**—All institutions, public or private, incorporated or not incorporated, for the reception of minors, whether as orphan, or as pauper, indigent, destitute, vagrant, disorderly, or delinquent persons, are hereby required to provide and keep a record in which shall be entered the date of reception, and the names and places of birth and residence as nearly as the same can be reasonably ascertained, of all children admitted in such institutions, and how and by whom and for what cause such children shall be placed therein, and the names, residence, birthplace and religious denomination of the parents of such children so admitted, as nearly as the same can be reasonably ascertained; and whenever any such child shall leave such institution, the proper entry shall be made in such record, showing in what manner such child shall

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have been disposed of, and if apprenticed to or adopted by any person or family, or otherwise placed out at service or on trial, the name and place of residence of the person or head of the family to or with whom such child shall have been so apprenticed, adopted, or otherwise placed out; and extracts from such record relating to any such child which shall have been so admitted shall, within twenty-four hours after request therefor by any parent, relative or legal guardian of such child, of the secretary or other officer of such asylum or other institution, and an order of the supreme court to that effect, be given by such officer to such parent, relative or legal guardian. Nothing in this section shall be construed to prevent visitation by relatives and friends in accordance with the established rules of such institutions.

§ 4. **Removal of children from one institution to another, etc.**

— While any child which shall have been placed in such asylum, or other institution, as a pauper, in pursuance of the second section of this act, shall remain therein at the expense of the county or town to which such pauper child is chargeable, the superintendents of the poor of such county, or the overseer of the poor of such town, may, in their discretion, remove such child from such asylum or other institution and place such child in some other such institution or make such other disposition of such child as shall then be provided by law. The name of no such child shall be changed while in such institution as in this section aforesaid. But no parent of such pauper child, so in such asylum or other institution as in this section aforesaid, shall be entitled to the custody thereof except in pursuance of a judgment or order of a court or judicial officer of competent jurisdiction, adjudging or determining that the interests of such child will be promoted thereby, and that such parent is fit, competent and able to duly maintain, support and educate such child.

§ 5. **Children may be bound out as apprentices, services, etc.—**

Any corporation specified in the first section of this act may bind out any indigent or pauper child, if a male, for a period which shall not be beyond his twenty-first year, and if a female, for a period which shall not be beyond her eighteenth year, which shall have been absolutely surrendered to the care and custody of such corporation in pursuance of the provisions of the first section of this act, or which shall have been placed therein as a pauper in

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pursuance of the provisions of the second section of this act, or which shall have been left to the care of such corporation with no provision by the parent, relative or legal guardian of such child, for its support for a period of one year then next preceding, to be a clerk, apprentice or servant.

The remainder of this section was repealed by the Domestic Relations Law (L. 1896, chap. 272).

§ 7. **Children may be placed by adoption with suitable persons.**

— Any child which a corporation specified in the first section of this act is, by the fifth section of this act, authorized to bind out may be placed by such corporation, by adoption, with some suitable person or persons, by a written instrument of adoption, which shall be executed under seal and signed in the corporate name of such corporation by such officer or officers as shall be authorized by the directors or trustees thereof to sign such corporate name to such instruments, and which shall be also signed by the person or persons with whom such child shall be so placed by adoption, and if either of the persons so taking such child by adoption shall then have a husband or wife from whom such person is not lawfully separated, such instrument of adoption shall also be signed by such husband or wife. When practicable, all such children shall be indentured, bound out and given for adoption to persons of the same religious faith as the parents of such children.

PROVISIONS OF THE DOMESTIC RELATIONS LAW, RELATIVE TO ADOPTION FROM CHARITABLE INSTITUTIONS.

[DOMESTIC RELATIONS LAW, L. 1896, CHAP. 272, §§ 65-68.]

§ 65. **Adoption from charitable institutions.**— Where an orphan asylum or charitable institution is authorized to place children for adoption, the adoption of every such child shall, when practicable, be given to persons of the same religious faith as the parents of such child. The adoption shall be effected by the execution of an instrument containing substantially the same provisions as the instrument provided in this article for voluntary adoption, signed and sealed in the corporate name of such corporation by the officer or officers authorized by the directors thereof to sign the corporate name to such instruments, and signed by the foster parent or parents and each person whose consent is necessary to the adoption; and may be signed by the child, if over twelve years of age, all of whom shall appear before the county

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judge or surrogate of the county where such foster parents reside and be examined, except that such officers need not appear; and such judge or surrogate may thereupon make the order of adoption provided by this article. Such instrument and order shall be filed and recorded in the office of the county clerk of the county where the foster parent resides, and the adoption shall take effect from the time of such filing and recording.

§ 66. **Abrogation of voluntary adoption.**—A minor may be deprived of the rights of a voluntary adoption by the following proceedings only:

The foster parent, the minor and the persons whose consent would be necessary to an original adoption, must appear before the county judge or surrogate of the county where the foster parent resides, who shall conduct an examination as for an original adoption. If he is satisfied that the abrogation of the adoption is desired by all parties concerned, and will be for the best interests of the minor, the foster parent, the minor, and the persons whose consent would have been necessary to an original adoption shall execute an agreement, whereby the foster parent and the minor agree to relinquish the relation of parent and child and all rights acquired by such adoption, and the parents or guardian of the child or the institution having the custody thereof, agree to re-assume such relation. The judge or surrogate shall indorse, upon such agreement, his consent to the abrogation of the adoption. The agreement and consent shall be filed and recorded in the office of the county clerk of the county where the foster parent resides, and a copy thereof filed and recorded in the office of the county clerk of the county where the parents or guardian reside, or such institution is located, if they reside, or such institution is located, within this state. From the time of the filing and recording thereof, the adoption shall be abrogated, and the child shall re-assume its original name and the parents or guardians of the child shall re-assume such relation. Such child, however, may be adopted directly from such foster parents by another person in the same manner as from parents, and as if such foster parents were the parents of such child.

§ 67. **Application in belief of the child for abrogation of an adoption from a charitable institution.**—A minor who shall have been adopted in pursuance of this chapter or of any act repealed

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thereby, from an orphan asylum or charitable institution, or any corporation which shall have been a party to the agreement by which such child was adopted, or any person on the behalf of such child, may make an application to the county judge of the surrogate's court of the county in which the foster parent then resides, for the abrogation of such adoption, on the ground of cruelty, misuse, refusal of necessary provisions or clothing, or inability to support, maintain or educate such child, or of any violation of duty on the part of such foster parent toward such child; which application shall be by a petition setting forth the grounds thereof, and verified by the person or by some officer of the corporation making the same. A citation shall thereon be issued by such judge or surrogate in or out of such court, requiring such foster parent to show cause why the application should not be granted. The provisions of the code of civil procedure relating to the issuing, contents, time and manner of service or citations issue out of a surrogate's court, and to the hearing on the return thereof, and to enforcing the attendance of witnesses, and to all proceedings thereon, and to appeals from decrees of surrogate's courts, not inconsistent with this chapter, shall apply to such citation, and to all proceedings thereon. Such judge or court shall have power to order or compel the production of the person of such minor. If on the proofs made before him, on the hearing on such citation, the judge or surrogate shall determine that either of the grounds for such application exists, and that the interests of such child will be promoted by granting the application, and that such foster parent has justly forfeited his right to the custody and services of such minor, an order shall be made and entered abrogating the adoption, and thereon the status of such child shall be the same as if no proceedings had been had for the adoption thereof.

After one such petition against a foster parent has been denied, a citation on a subsequent petition against the same foster parent may be issued or refused in the discretion of the judge or surrogate to whom such subsequent petition shall be made.

§ 68. **Application of the foster parent for the abrogation of such an adoption.**—A foster parent who shall have adopted a minor in pursuance of this chapter or of any act repealed thereby, from an orphan asylum or charitable institution, may apply to the county judge or surrogate's court of the county in which such

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foster parent resides, for the abrogation of such adoption on the ground of the willful desertion of such child from such foster parent, or of any misdemeanor or ill-behavior of such child, which application shall be by petition, stating the grounds thereof, and the substance of the agreement of adoption, and shall be verified by the petitioner; and thereon a citation shall be issued by such judge or surrogate in or out of such court, directed to such child, and to the corporation which was a party to such adoption, or, if such corporation does not then exist, to the superintendent of the poor of such county, requiring them to show cause why such petition should not be granted. Unless such corporation shall appear on the return of such citation, before the hearing thereon shall proceed, a special guardian shall be appointed by such judge or court to protect the interests of such child in such proceeding and the foster parent shall pay to such special guardian such sum as the court shall direct for the purpose of paying the fees and the necessary disbursements in preparing for and contesting such application on behalf of the child. If such judge or surrogate shall determine, on the proofs made before him, on the hearing of such citation, that the child has violated his duty toward such foster parent, and that due regard to the interests of both require that such adoption be abrogated, an order shall be made and entered accordingly; and such judge or court may make any disposition of the child, which any court or officer shall then be authorized to make of vagrant, truant or disorderly children. If such judge or surrogate shall otherwise determine an order shall be made and entered denying the petition.

INSTITUTIONS FOR THE CARE AND INSTRUCTION OF THE BLIND AND DEAF MUTES.

The question has been discussed as to whether the institutions for the instruction of the blind and deaf mutes are charitable institutions and subject to the inspection and visitation of the board of state charities and the laws relating to charitable institutions. The main purpose of such institutions is the instruction of the pupils therein; their care and maintenance is an incident to such instruction. Judge BEEKMAN, in the case of *People ex rel. N. Y. Inst. for the Blind v. Fitch*, 16 Misc. 464, declared such institutions to be educational in their nature and, therefore, not subject to the powers of the state board of charities under the Constitution. The Court of Appeals reversed Judge BEEKMAN, and by a divided court held such institutions to be charitable and subject to the visitation of the state board of charities. See 154 N. Y. 14. We have, therefore, inserted the acts relating to such institutions.]

- ARTICLE I. The New York State School for the Blind at Batavia.
II. Institutions for the care and instruction of deaf mutes.
III. Appointments of pupils to be made by superintendent of public instruction.

ARTICLE I.

THE NEW YORK STATE SCHOOL FOR THE BLIND AT BATAVIA.

L. 1865, chap. 587 — An act to authorize the establishment of the New York State Institution for the Blind.

Sections 1 to 9 are omitted as temporary.

§ 10. **Trustees.**— As soon as suitable accommodations shall be provided, the governor shall, by and with the consent of the senate, appoint nine trustees, two from the first judicial district and one from each of the other judicial districts, who shall take charge of said institution. Such trustees shall serve without pay, and shall hold their offices for three years and until others are appointed.

§ 11. **Admissions to asylum.**— Application for admission into such institution shall be made to a justice of the supreme court or of the court of common pleas or to a county judge in the county where such applicant shall reside. Such justice or judge shall hear the application and make due inquiry into the pecun-

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iary circumstances of such applicant, or of the parents or guardians thereof, and if it shall be proved to his satisfaction that such person or the parents or guardians of such person are unable to pay for the support thereof, and that such county is entitled to send such person to such institution, he may make his order to that effect, and thereupon such person shall be sent to and admitted into such institution for a term not exceeding seven years.

L. 1895, chap. 563 — An act changing the name of the New York State Institution for the Blind.

SECTION 1. The New York State Institution for the Blind, as the same was authorized to be established by chapter five hundred and eighty-seven of the laws of eighteen hundred and sixty-five and the acts supplemental thereto, shall hereafter be known and designated as the "New York State School for the Blind."

§ 12. **Preference to soldiers' children.**— The persons who shall be entitled to the benefits of this institution shall be admitted in the order of their application for admission, except that the blind children of those who shall have died in the military service of the United States, or from wounds or injuries received therein during the present rebellion, shall in all cases have a preference; except, however, that each county shall be entitled to admission for its blind population in indigent circumstances in the same proportion which the whole number of its blind population shall bear to the whole blind population of the state which proportion shall be determined by the trustees; provided, however, that for each person sent by any county, such county shall pay the annual sum of fifty dollars toward the support of such person.

§ 13. **Power of trustees.**— Said trustees shall, as soon after their appointment as may be, meet and organize by choosing one of their number as president and appointing a secretary. They shall have power to make by-laws and rules and regulations for the transaction of their business and for the regulation and management of said institution, which institution shall be wholly under their control; and as soon as may be necessary, they shall appoint some suitable person as superintendent, and such other officers and employees as may be necessary to properly carry on the business of said institution, and fix the compensation thereof.

§ 14. **Records to be kept.**— Said trustees shall keep full and complete records of all their proceedings, and also of the business

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and daily transactions of such institution, in books to be provided for that purpose; and shall annually make report thereof to the legislature, in and during the month of January.

Section 15 is omitted as temporary.

L. 1867, chap. 744.—An act to define the objects of New York State Institution for the Blind, and to provide for its management.

§ 1. **Persons entitled to privileges of the institution.**—All blind persons of suitable age and capacity for instruction, who are legal residents of the state, shall be entitled to the privileges of the New York State Institution for the Blind, without charge, and for such a period of time in each individual case as may be deemed expedient by the board of trustees of said institution; provided, that whenever more persons apply for admission at one time than can be properly accommodated in the institution, the trustees shall so apportion the number received, that each county may be represented in the ratio of its blind population to the total blind population of the state; and provided further, that the children of citizens who died in the United States service, or from wounds received therein during the late rebellion, shall take precedence over all others.

§ 2. **Non-residents.**—Blind persons from without the State may be received into the institution upon the payment of an adequate sum, fixed by the trustees, for their boarding and instruction; provided that such applicant shall in no case exclude those from the state of New York.

§ 3. **Applications for admissions, how made; certificate required.**—Applications for admission into the institution shall be made to the board of trustees in such manner as they may direct, but the board shall require such application to be accompanied by a certificate from the county judge or county clerk of the county or the supervisor or town clerk of the town, or the mayor of the city where the applicant resides, setting forth that the applicant is a legal resident of the town, county and state claimed as his or her residence. [*Thus amended by L. 1872, chap. 616.*]

§ 4. **Object of the institution.**—The primary object of the institution shall be to furnish to the blind children of the state the

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best known facilities for acquiring a thorough education, and train them in some useful profession or manual art, by means of which they may be enabled to contribute to their own support after leaving the institution; but it may likewise, through its industrial department, provide such of them with appropriate employment and boarding accommodations as find themselves unable after completing their course of instruction and training, to procure these elsewhere for themselves. It shall, however, be in no sense an asylum for those who are helpless from age, infirmity, or otherwise, or a hospital for the treatment of blindness.

§ 5. **Successors of present board of trustees.**— Upon the expiration of the term of office of the present board of trustees, the governor shall, by and with the consent of the senate, appoint their successors, two of whom shall reside in the county wherein said institution is located, and a majority of whom shall reside within fifty miles of said institution, and at the first meeting of said board, after their appointment as aforesaid they shall divide themselves by lot into three equal classes, who shall serve for two, four and six years respectively, from the date of their appointments, and until their successors shall have been appointed, and every alternate year thereafter the governor shall, by and with the consent of the senate, appoint three trustees to fill the places of those whose term of service will have expired, in accordance with the provisions of this section.

§ 6. **Declination.**— In case of the declension of any member of said board of trustees to act under his appointment, or of the occurrence of any other casual vacancy in the board, the governor shall forthwith appoint some suitable person to fill such vacancy, and the member so appointed shall serve out the time of his predecessor.

§ 7. **Trustees to receive no compensation, except mileage.**— The trustees shall receive no compensation as such, but they may allow themselves mileage, at the same rate as that paid to members of the legislature, for any distance actually travelled in the service of the institution. Nor shall any trustee be pecuniarily interested in any contract for buildings pertaining to the institution, or in furnishing supplies therefor.

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§ 8. **Powers of board of trustees.**— The board of trustees shall have charge of all the affairs of the institution, with power to make all necessary by-laws and regulations for their government and the proper management of the institution, as well as for the admission of pupils, and to do all else which may be found necessary for the advancement of its humane design.

§ 9. **Adoption of seal.**— They shall elect from their own number a president, treasurer and secretary, together with such standing committees as they may deem necessary, and adopt a common seal for the institution.

L. 1873, chap. 463, § 2. The board of trustees may elect a secretary, who shall serve during the pleasure of the board, and who shall not be a member thereof, and may fill any vacancy in the said office as often as the same shall occur, and may prescribe his duties and fix his compensation.

§ 10. **Treasurer.**— The treasurer shall have the custody of all the funds of the institution, and pay out the same only upon properly authenticated orders of the board or its executive committee. Before entering upon the duties of his office he shall give a bond with at least two sureties to be approved as hereinafter stated, to the people of the State of New York in the penal sum of twenty-five thousand dollars, conditioned for the faithful discharge of his trust, which bond shall be approved by the state treasurer of this State, in whose office the same shall be filed.

§ 11. **Superintendent.**— The trustees shall have power to appoint a competent and experienced superintendent, who shall be the chief executive officer of the institution, together with an efficient corps of instructors and other subordinate officers; prescribe the duties and terms of service of the same; fix and pay their salaries, and for just cause, remove any or all of them from office. They shall likewise employ the requisite number of servants and other assistants in the various departments of the institution, and pay the wages of the same.

§ 12. **Furniture.**— They shall purchase all furniture, apparatus and other supplies necessary to the equipment and carrying on of the institution in the most efficient manner.

§ 13. **Provision of clothing for those admitted to institution.**— When any blind person shall, upon proper application, be ad-

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mitted into the institution, it shall be the duty of his or her parents, guardians or other friends, to suitably provide such person with clothing at the time of entrance and during continuance therein, and likewise to defray his or her travelling expenses to and from the institution at the time of entrance and discharge, as well as at the beginning and close of each session of the school, and at any other time when it shall become necessary to send such person home on account of sickness or other exigency. And whenever it shall be deemed necessary by the trustees to have such person permanently removed from the institution, in accordance with the by-laws and regulations thereof, the same shall be promptly removed upon their order, by his or her parents, guardians or other friends.

§ 14. **Neglect to provide the same.**—If the friends of any pupil from within the State of New York shall fail, through neglect or inability, to provide the same with proper clothing or with funds to defray his or her necessary travelling expenses to and from the institution, or to remove him or her therefrom, as required in the preceding section, the trustees shall furnish such clothing, pay such travelling expenses, or remove such pupil to the care of the overseers of the poor of his or her township, and charge the cost of the same to the county to which the pupil belongs; provided that the annual amount of such expenditures on account of any one pupil shall not exceed the sum of sixty dollars. And in case of the death of any pupil at the institution, whose remains shall not be removed or funeral expenses borne by the friends thereof, the trustees shall defray the necessary burial expenses, and charge the same to his or her county as aforesaid. Upon the completion of their course of training in the industrial department, the trustees may furnish to such worthy poor pupils as may need it, an outfit of machinery and tools for commencing business, at a cost not exceeding seventy-five dollars each, and charge the same to the proper county as aforesaid. [*Thus amended by L. 1873, chap. 463, § 1.*]

§ 15. **Itemized accounts against respective counties.**—On the first day of October in each year, the trustees shall cause to be made out against the respective counties concerned, itemized accounts, separate in each case, of the expenditures authorized by the preceding section of this act, and forward the same to the

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board of supervisors chargeable with the account. The board shall thereupon direct the county treasurer to pay the amount so charged to the treasurer of the Institution for the Blind, on or before the first day of March next ensuing.

§ 16. **And payment of the same.**— The counties against which the said accounts shall be made out as aforesaid shall cause their respective treasurers, in the name of their respective counties, to collect the same, by legal process, if necessary, from the parents or estates of the pupils who have the ability to pay, on whose account the said expenditures shall have been made; provided that at least five hundred dollars' value of the property of such parent or estate shall be exempt from the payment of the accounts aforesaid.

§ 17. **Books gratuitously distributed by State.**— The institution shall be entitled to receive copies of all books and other publications which are distributed gratuitously by the State to township or county libraries, common schools, academies, colleges and societies. It may also receive, in the name of the State, bequests or donations of money or any kind of property, but such money or property shall in all cases belong to the State, and be subejet to its control; provided that the same shall not be diverted from the particular object for which it shall be bequeathed or donated.

§ 18. **Records of proceedings of board of trustees.**— The board of trustees shall keep full and complete records of their proceedings, and make an annual report of the same to the legislature, at the commencement of the regular session thereof, strictly accounting in detail for their expenditures, on account of the institution, during the preceding fiscal year, of the State, setting forth the progress and condition of the several departments of the institution, making such suggestions concerning its future management as they may deem essential, and submitting proper estimates of the funds needed for its support, as well as for building and all other purposes.

§ 19. **Payment of appropriations.**— The State treasurer is hereby directed to pay over to the board of trustees, upon the warrant of the comptroller, all moneys which shall hereafter be appropriated on account of the New York State Institution for the

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Blind; the general appropriations for the current support of the institution, to be paid in equal quarterly installments, and specific appropriations for building and other purposes, to be paid when needed by the trustees.

§ 20. **Drafts upon the State.**— All drafts upon the State treasury on behalf of the institution shall be based upon orders of the board of trustees, signed by the president and secretary of the same, and attested by the common seal of the institution.

§ 21. **Sections construed.**— Sections nineteen and twenty of this act shall not be construed to alter, impair or affect the powers or duties of the building commissioners appointed under the provisions of chapter five hundred and eighty-seven, of the laws of eighteen hundred and sixty-five; and nothing in this act shall be construed to interfere with the erection of said building commissioners of the State Institution for the Blind, in accordance with the plans heretofore approved by the governor, secretary of state and comptroller; and all moneys now or hereafter to be appropriated for the building of said institution, shall be paid to said building commissioners for that purpose.

§ 22. **Further powers of the institution.**— The New York Institution for the Blind shall continue to have the custody, charge, maintenance and education of all such pupils as are now intrusted to them by the State, and of any others who may be appointed prior to the opening of the state institution at Batavia; and shall receive compensation from the State for the maintenance, education and support of said pupils in the same manner as is now, or has heretofore been provided, and shall receive the same amount per capita from the counties from which said pupils are respectively appointed as is now paid, for their clothing, until such period as the New York State Institution for the Blind shall be ready to receive such pupils, and shall then, without reference to the term of years for which said pupils have been appointed under existing laws, and received by said New York Institution for the Blind, transfer said pupils to said state institution; provided, however, that they shall retain and continue to receive all pupils heretofore appointed or hereafter to be appointed, from the counties of New York and Kings under the appointment of the superintendent of public instruction, in like manner as is now

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provided by law, to be received, maintained and educated by the said New York Institution for the Blind, which shall be compensated for their maintenance and education by the State; and for their clothing by the counties from which they are appointed, in like manner as is now done.

§ 23. **Repeal.**—All acts and parts of acts, inconsistent with the provisions of this act, are hereby repealed.

ARTICLE II.

INSTITUTIONS FOR THE CARE AND INSTRUCTION OF DEAF-MUTES.

L. 1854, Chap. 272 — An act in relation to the New York Institution for the Instruction of the Deaf and Dumb.

§ 1. **Selection of pupils.**— Every indigent, deaf and dumb person, resident of this State, between twelve and twenty-five years of age, whose parent or parents, or, if an orphan, whose nearest friend, shall have been a resident of this State for three years, and who may make application for that purpose, shall, until provision be made by law for his or her instruction in some other institution or school, be received into the New York Institution for the Instruction of the Deaf and Dumb, provided his or her application for that purpose be first approved of by the superintendent of public instruction.

§ 2. **How supported.**— Each indigent pupil, so received into the institution aforesaid, shall be provided with board, lodging and tuition; and the directors of the institution shall receive for each pupil so provided the sum of one hundred and fifty dollars per annum, in quarterly payments, to be paid by the treasurer of the state, on the warrant of the comptroller, to the treasurer of the said institution, on his presenting a bill of the actual time and number of pupils attending the institution, and which bill shall be signed and verified by the oath of the president and secretary of the institution. The regular term of instruction for such pupils shall be five years. The indigent pupils, provided for in this act, shall be designated state pupils, and all the existing provisions of law, applicable to state pupils now in said institution, shall apply to pupils herein provided for.

§ 3. **Superintendent may continue pupils for studies in higher branches.**— It shall be lawful for the superintendent of public instruction to continue at the said institution, for a period not exceeding three years, for the purpose of pursuing a course of studies in the higher branches of learning, such pupils, not ex-

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ceeding twenty-four in number, as may have completed their full term of instruction, and who may be recommended by the directors of said institution. [*Thus amended by L. 1885, chap. 58.*]

The remainder of this statute relates to the affairs of the corporation therein named.

L. 1863, chap. 325 — An act to provide for the care and education of indigent deaf-mutes under the age of twelve years.

§ 1. **Deaf-mutes to be placed in State institution.**— Whenever a deaf-mute child, under the age of twelve years, shall become a charge for its maintenance on any of the towns or counties of this state, or shall be liable to become such charge, it shall be the duty of the overseers of the poor of the town, or of the supervisors of such county, to place such child in the New York Institution for the Deaf and Dumb, or in the Institution for the Improved Instruction of Deaf-mutes, or in the Le Couteulx St. Mary's Institution for the Improved Instruction of Deaf-mutes, in the city of Buffalo, or in the Central New York Institution for Deaf-mutes, in the city of Rome, or in any institution of the state for the education of deaf-mutes. [*Thus amended by L. 1875, chap. 213.*]

§ 2. **On application of parents, etc.**— Any parent, guardian or friend of a deaf-mute child within this state, over the age of six years and under the age of twelve years, may make application to the overseers of the poor of any town, or to any supervisor of the county where such child may be, showing by satisfactory affidavit, or other proof, that the health, morals or comfort of such child may be endangered, or not properly cared for, and thereupon it shall be the duty of such overseer or supervisor to place such child in the New York Institution for the Deaf and Dumb, or in the Institution for the Improved Instruction of Deaf-mutes, or in the Le Couteulx St. Mary's Institution for the Improved Instruction of Deaf-mutes, in the city of Buffalo, or in the Central New York Institution for Deaf-mutes, in the city of Rome, or in any institution in the state for the education of deaf-mutes. [*Thus amended by L. 1875, chap. 213.*]

§ 3. **Expense.**— The children placed in said institutions, in pursuance of the foregoing sections, shall be maintained therein

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at the expense of the county from whence they came, provided that such expense shall not exceed three hundred dollars each per year, until they attain the age of twelve years, unless the directors of the institution to which a child has been sent shall find that such child is not a proper subject to remain in said institution. [*Thus amended by L. 1875, chap. 213.*]

§ 4. **Id.**—The expenses for the board, tuition and clothing for such deaf-mute children, placed as aforesaid in said institutions, not exceeding the amount of three hundred dollars per year, above allowed, shall be raised and collected as are other expenses of the county from which such children shall be received; and the bills therefore, properly authenticated by the principal or one of the officers of the institution, shall be paid to said institution by the said county; and its county treasurer or chamberlain, as the case may be, is hereby directed to pay the same on presentation, so that the amount thereof may be borne by the proper county. [*Thus amended by L. 1875, chap. 213.*]

L. 1864, chap. 386 — An act to amend an act entitled “An act in relation to the New York Institution for the Instruction of the Deaf and Dumb,” passed April eighteenth, eighteen hundred and thirty-eight.

§ 1. **Amendment.**—The third section of the act entitled “An act in relation to the New York Institution for the Instruction of the Deaf and Dumb,” passed April eighteenth, eighteen hundred and thirty-eight, is hereby amended so as to read as follows:

§ 3. **Money may be raised to clothe indigent pupils.**—The supervisors of any county in this state from which county pupils may be selected, whose parents or guardians are unable to furnish them with suitable clothing, are hereby authorized and required to raise each year for this purpose, for each such pupils from said county, the sum of thirty dollars.

L. 1870, chap. 180 — An act relative to the care and education of deaf-mutes.

Section 1 amends L. 1863, chap. 325.

§ 2. **Expenses.**—All provisions of law now existing, fixing the expense of the board, tuition and clothing of children under

Institutions for the care and instruction of deaf-mutes.

twelve years placed in the New York Institution for the Instruction of the Deaf and Dumb, shall apply to children who may, from time to time, be placed in the said Institution for the Improved Instruction of Deaf-mutes, in the same manner, and with the like effect, as of said last-mentioned institution had also originally been named in the acts fixing such compensation, and as if said acts had provided for the payment thereof to the institution last-mentioned, and the bills therefor properly authenticated by the principal or one of the officers of the said last-mentioned institution shall be paid to said institution by the counties respectively from which such children were severally received, and the county treasurer or chamberlain, as the case may be, is hereby directed to pay the same on presentation, so that the amount thereof may be borne by the proper county.

§ 3. **Application of prior act.**—Sections nine and ten of title one of an act entitled “An act to revise and consolidate the general acts relating to public instruction,” passed May second, eighteen hundred and sixty-four, are hereby amended so that the same shall extend and apply to the said “Institution for the Improved Instruction of Deaf-Mutes,” in the like manner, and with the like effect, as if said last-mentioned institution, as well as the others therein mentioned, had originally been named in the said sections respectively.

L. 1874, chap. 253 — An act relative to the care and education of deaf-mutes.

§ 1. **Application by parent, guardian, etc.; duty of supervisor.**—Any parent, guardian or friend of any deaf-mute child within this state, over the age of six years and under the age of twelve years, may make application to the supervisor of the town or city where such child may be for a permit or order to place such child in the New York Institution for the Deaf and Dumb or in the Institution for the Improved Instruction of Deaf-Mutes, or in any of the deaf-mute institutions of this state, and it shall be the duty of such supervisor, if in his judgment the means of the child, or the parents or parent of such child, will not enable them to defray the expense in a public institution, to grant such permit or order and to cause such child to be received and placed in such one of the institutions of this state for the education of deaf-mutes, as the said supervisor shall select.

Institutions for the care and instruction of deaf-mutes.

L. 1876, chap. 331 — An act in relation to the Western New York Institution for Deaf-Mutes.

§ 1. **Reception of pupils.**— The Western New York Institution for Deaf-Mutes, at Rochester, is hereby authorized to receive deaf and dumb persons between the ages of twelve and twenty-five years, eligible to appointment as state pupils, and who may be appointed to it by the superintendent of public instruction, and the superintendent of public instruction is authorized to make appointments to said institution in the same manner and upon the same conditions as to the New York Institution for the Instruction of the Deaf and Dumb.

§ 2. **Powers of supervisors, etc.**— Supervisors of towns and wards and overseers of the poor are hereby authorized to send to the Western New York Institution for Deaf-Mutes, deaf and dumb persons between the ages of six and twelve years, in the same manner and upon the same conditions as such persons may be sent to the New York Institution for the Instruction of the Deaf and Dumb, under the provisions of chapter three hundred and twenty-five of the laws of eighteen hundred and sixty-three.

L. 1884, chap. 275 — An act in relation to the Northern New York Institution for Deaf Mutes, at Malone, New York.

§ 1. **Institution may receive pupils, etc.**— The Northern New York Institution for Deaf-Mutes, at Malone, is hereby authorized to receive deaf and dumb persons, between the ages of twelve and twenty-five years, eligible to appointment as state pupils, and who may be appointed to it by the superintendent of public instruction, and the superintendent of public instruction is authorized to make appointments to the aforesaid institution.

§ 2. **Supervisors, etc., may send pupils under provisions of law named.**— Supervisors of towns and wards and overseers of the poor are hereby authorized to send to the Northern New York Institution for Deaf-Mutes, deaf and dumb persons between the ages of six and twelve years, under the provisions of chapter three hundred and twenty-five of the laws of eighteen hundred and sixty-three, as amended by chapter two hundred and thirteen of the laws of eighteen hundred and seventy-five. Provided that

Institutions for the care and instruction of deaf-mutes.

before any pupils are sent to said institution the board of state charities shall have made and filed with the superintendent of public instruction a certificate to the effect that said institution has been duly organized and is prepared for the reception and instruction of such pupils.

ARTICLE III.

APPOINTMENTS OF PUPILS TO BE MADE BY SUPERINTENDENT OF PUBLIC INSTRUCTION.

Consolidated School Law.

[L. 1894, CHAP. 556, TIT. XV, ART. 14.]

§ 40. **Institution subject to visitation by superintendent of public instruction.**— All the institutions for the instruction of the deaf and dumb, and blind, and all other similar institutions, incorporated under the laws of the state, or that may be hereafter incorporated, shall be subject to the visitation of the superintendent of public instruction, and it shall be his duty:

1. To inquire, from time to time, into the expenditures of each institution, and the systems of instruction pursued therein, respectively.

2. To visit and inspect or cause to be visited and inspected, the schools belonging thereto, and the lodgings and accommodations of the pupils.

3. To ascertain by comparison with other similar institutions, whether any improvements in instruction and discipline can be made; and for that purpose to appoint, from time to time, suitable persons to visit the schools.

4. To suggest to the directors of such institutions and to the legislature such improvements as he shall judge expedient.

5. To make an annual report to the legislature on all the matters before enumerated, and particularly as to the condition of the schools, the improvement of the pupils, and their treatment in respect to board and lodging.

§ 41. **Appointments of pupils to institutions.**— All deaf and dumb persons resident in this state and upwards of twelve years of age, who shall have been resident in this state for three years immediately preceding the application, or, if a minor, whose parent or parents, or, if an orphan, whose nearest friend, shall have been resident in this state for three years immediately preceding the application, shall be eligible to appointment as state pupils in

Appointment of pupils made by supt. of public instruction.

one of the deaf and dumb institutions of this state, authorized by law to receive such pupils; and all blind persons of suitable age and similar qualifications shall be eligible to appointment to the institutions for the blind in the city of New York or in the village of Batavia, as follows: All such as are residents of the counties of New York, Kings, Queens, Suffolk, Richmond, Westchester, Putnam and Rockland, shall be sent to the institution for the blind in the city of New York; those who reside in other counties of this state shall be sent to the institution for the blind in the village of Batavia. All such appointments with the exception of those to the institution for the blind in the village of Batavia, shall be made by the superintendent of public instruction upon application, and in those cases in which, in his opinion, the parents or guardians of the applicants are able to bear a portion of the expense, he may impose conditions whereby some proportionate share of expense of educating and clothing such pupils shall be paid by their parents, guardians or friends, in such manner and at such times as the superintendent shall designate, which conditions he may modify from time to time, if he shall deem it expedient to do so.

§ 42. **Support and instruction of pupils.**— Each pupil so received into either of the institutions aforesaid shall be provided with board, lodging and tuition; and the directors of the institution shall receive for each pupil so provided for, the sum of

dollars per annum, in quarterly payments, to be paid by the treasurer of the state, on the warrant of the comptroller, to the treasurer of said institution, on his presenting a bill showing the actual time and number of such pupils attending the institution, and which bill shall be signed by the president and secretary of the institution, and verified by their oaths. The regular term of instruction for such pupils shall be for five years; but the superintendent of public instruction may, in his discretion, extend the term of any pupil for a period not exceeding three years. The pupils provided for in this and the preceding section of this title shall be designated state pupils; and all the existing provisions of law applicable to state pupils now in said institutions shall apply to pupils herein provided for.

§ 43. **Admission; regulations.**— The superintendent of public instruction may make such regulations and give such directions to parents and guardians, in relation to the admission of pupils into either of the above-named institutions, as will prevent pupils entering the same at irregular periods.

CHAPTER TEN.

THE STATUTORY CONSTRUCTION LAW.

As Amended by the Commencement of the Legislative Session of 1897.

Laws 1892, chap. 677 — An act relating to the construction of statutes, constituting chapter one of the general laws.

[Became a law May 18, 1892, taking effect immediately.]

CHAPTER I OF THE GENERAL LAWS.

THE STATUTORY CONSTRUCTION LAW.

- | | |
|--|---|
| §1. Short title; extent of application. | §21. County clerk; register. |
| §2. Property. | §22. Village. |
| §3. Real property. | §23. State. |
| §4. Personal property. | §24. Public holiday; half-holiday. |
| §5. Person. | §25. Year. |
| §6. Judge. | §26. Month. |
| §7. Lunacy; idiocy. | §27. Day; mode of computing days; night-time. |
| §8. Gender; number; tense. | §28. Standard time. |
| §9. Heretofore; hereafter; now. | §29. Civil and criminal codes. |
| §10. Last; preceding; next; following. | §30. Laws of England and of the colony of New York. |
| §11. Folio. | §31. Limiting the effect of repealing statutes. |
| §12. Writing; signature. | §32. Effect of repeal and re-enactment. |
| §13. Seal. | §33. Effect of revision upon laws passed at the same session or before revision takes effect. |
| §14. Oath; affidavit; swear. | §34. Alterations of titles and head-notes. |
| §15. Acknowledge; acknowledgement. | §35. Laws repealed. |
| §16. Bond; undertaking. | §36. Time of taking effect. |
| §17. Choose; elect; appoint. | |
| §18. Board composed of one person. | |
| §19. Meeting; quorum; powers and majority. | |
| §20. Service of notice upon board or body. | |

[Thus amd. by Laws 1894, chap. 448. See § 34 hereof.]

§ 1. **Short title; extent of application.**— This chapter shall be known as the Statutory Construction Law, and is applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by this chapter.

See note to section 31 hereof, and note in 29 Abb. N. C. 146.

Definitions.

§ 2. **Property.**— The term property includes real and personal property.

§ 3. **Real Property.**— The term real property includes real estate, lands, tenements and hereditaments, corporeal and incorporeal.

§ 4. **Personal property.**— The term personal property includes chattels, moneys, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property; or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership. The term chattels includes goods and chattels.

§ 5. **Person.**— The term person includes a corporation and a joint-stock association. When used to designate a party whose property may be the subject of any offense, the term person also includes the state, or any other state, government or country which may lawfully own property in the state.

§ 6. **Judge.**— The term judge includes every judicial officer authorized, alone or with others, to hold or preside over a court of record.

§ 7. **Lunacy; idiocy.**— The terms lunatic and lunacy include every kind of unsoundness of mind except idiocy.

For definition of insanity as a defense to crime, see Penal Code, §§ 20-22.

§ 8. **Gender; number; tense.**— Words of the masculine gender include the feminine and the neuter, and may refer to a corporation, or a board or other body or assemblage of persons; and, when the sense so indicates, word of the neuter gender may refer to any gender. The term men includes boys and the term women includes girls.

Words in the singular number include the plural and in the plural number include the singular.

Words in the present tense include the future.

§ 9. **Heretofore; hereafter; now.**— Each of the terms, heretofore, and hereafter, in any provision of a statute, relates to the

Definitions.

time such provision takes effect. The term now in any provision of a statute referring to other laws in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or the person in office, or to the facts or circumstances existing, respectively, immediately before the taking effect of such provision.

§ 10. **Last; preceding; next; following.**—A reference to the last or preceding section, or other provisions of a statute, means the section or other division immediately preceding, and a reference to the next or following section or other division of a statute means the section or other division immediately following.

§ 11. **Folio.**—A folio is one hundred words, counting as a word each figure necessarily used.

§ 12. **Writing; signature.**—The terms writing and written include every legible representation of letters upon a material substance, except when applied to the signature of an instrument. The term signature includes any memorandum, mark or sign, written or placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

§ 13. **Seal.**—The private seal of a person, other than a corporation, to any instrument or writing, shall consist of a wafer, wax or other similar adhesive substance affixed thereto, or of paper or other similar substance affixed thereto, by mucilage or other adhesive substance, or of the word “seal,” or the letters “L. S.,” opposite the signature.

A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed, in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under their private seals, shall be deemed to have been executed under the corporate seal.

As to what constituted a seal at common law, and when equity before this statute would treat “L. S.,” etc., as a seal, see *Barnard v. Gantz*, 140 N. Y. 249; *Town of Solon v. Williamsburgh Bank*, 114 id. 122.

Oaths, acknowledgment, etc.

§ 14. **Oath; affidavit; swear.**—The terms oath and affidavit include every mode authorized by law of attesting the truth of that which is stated.

The term swear includes every mode authorized by law for administering an oath. When an affidavit is authorized or required it may be sworn to before any officer authorized by law to take the acknowledgment of deeds in this state, unless a particular officer is specified before whom it is to be taken.

For definitions of these terms for the purposes of perjury, see Penal Code, § 97. Any verified pleading or other paper is an affidavit within the meaning of the Civil Code. See § 3343, subd. 11. As to mode of administering oaths, etc., see Civil Code, §§ 842-851. As to what officers may take acknowledgments of deeds in this state, see note to next section.

§ 15. **Acknowledge; acknowledgment.**—When the execution of any instrument or writing is authorized or required by law to be acknowledged, or to be proven so as to entitle it to be filed or recorded in a public office, the acknowledgment may be taken or the proof made before any officer then and there authorized to take the acknowledgment or proof of the execution of a deed of real property to entitle it to be recorded in a county clerk's office, and shall be made and certified in the same manner as such acknowledgment or proof of such deed.

The term acknowledge and acknowledgment, when used with reference to the execution of an instrument or writing other than a deed of real property, includes a compliance with the provisions of this section by either such proof or acknowledgment.

[As to requirements of acknowledgments, see R. S. part II, chap. 3, §§ 9, 12, 15.]

The following officers may take acknowledgments within the state:

Notaries public. Executive Law (Laws 1892, chap. 683,) § 85, as amended by Laws 1894, chap. 88.

Commissioners of deeds. Executive Law (Laws 1892, chap. 683), § 88, as amended by Laws 1894, chap. 88.

Justices of the peace. Laws 1840, chap. 238, § 1.

Mayors, recorders and judges of courts of record. R. S. part II, chap. 3, § 4, subd. 1.

Surrogates. Laws 1884, chap. 300.]

§ 16. **Bonds; undertaking.**—A provision of law authorizing or requiring a bond to be given shall be deemed to have been complied with by the execution of an undertaking to the same effect.

§ 17. **Choose; elect; appoint.**—The term choose includes elect and appoint.

Board, meeting, etc.

§ 18. **Board composed of one person.**—A reference to several officers of a municipal corporation holding the same office, or to a board of such officers, shall be deemed to refer to the single officer holding such office, when but one person is chosen to fill such office in pursuance of law.

§ 19. **Meeting; quorum; powers of majority.**—Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of all such persons or officers at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting or at any meeting duly held upon reasonable notice to all of them, may perform and exercise such power, authority or duty, and if one or more of such persons or officers shall have died or have become mentally incapable of acting, or shall refuse or neglect to attend any such meeting, a majority or* the whole number of such persons or officers shall be a quorum of such board or body, and a majority of a quorum, if not less than a majority of the whole number of such persons or officers may perform and exercise any such power, authority or duty. Any such meeting may be adjourned by a less number than a quorum. A recital in any order, resolution or other record of any proceeding of such meeting, that such meeting had been so held or adjourned, or that it had been held upon such notice to the members, shall be presumptive evidence thereof.

§ 20. **Service of notice upon body or board.**—When a notice is required to be given to a board or body, service of such notice upon the clerk or chairman thereof shall be sufficient.

§ 21. **County clerk; register.**—Any act done in pursuance of law by the register of a county shall be deemed to be a compliance with any provision of law authorizing or requiring such act to be done by the county clerk of such county, and any instrument or writing filed, entered or recorded in pursuance of law in the office of a register of a county, shall be deemed to be a compliance with any provision of law authorizing or requiring such paper to be filed, entered or recorded. as the case may be, in the office of the clerk of such county.

* So in the original.

Village, public holiday, etc.

§ 22. **Village.**—The term village means an incorporated village.

§ 23. **State; territory.**—The term State, when used generally to include every state of the United States, includes also every territory of the United States and the District of Columbia. The term territory when used generally to include every territory of the United States, includes also the District of Columbia.

§ 24. **Public holiday; half holiday.**—The term holiday includes the following days in each year: The first day of January, known as New Year's day; the twelfth day of February, known as Lincoln's birthday; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as memorial day; the fourth day of July, known as independence day; the first Monday of September, known as labor day, and the twenty-fifth day of December, known as Christmas day, and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States or by the governor of this State as a day of general thanksgiving, general fasting and prayer, or other general religious observances.

The term half-holiday includes the period from noon to midnight of each Saturday which is not a holiday. The days and half-days aforesaid, shall be considered as the first day of the week, commonly called Sunday, and as public holidays or half-holidays for all purposes whatsoever as regards the transaction of business in the public offices of this State, or counties of this State. On all other days and half days, excepting Sundays, such offices shall be kept open for the transaction of business. An act to be done on a holiday can be done on day following with legal effect.

L. 1902, chap. 39.

§ 25. **Year.**—Time shall continue to be computed in this state according to the Gregorian or new style. The first day of each year after the year 1752 is the first day of January, according to such style. For the purpose of computing and reckoning the days of the year in the same regular course in the future, every year, the number of which in the Christian era is a multiple of four, is a bisextile or leap year consisting of three hundred and sixty-six days, unless such number of the year is a multiple of one hundred and the first two figures thereof treated

Month, days.

as a separate number is not a multiple of four, and every year which is not a leap year is a common year consisting of three hundred and sixty-five days.

The term year in a statute, contract, or any public or private instrument, means three hundred and sixty-five days, but the added day of a leap year and the day immediately preceding shall for the purpose of computation be counted as one day.

In a statute, contract or public or private instrument, the term year means twelve months, the term half-year, six months and the term a quarter of a year, three months.

Years held to consist of 365 days as to a transaction when the R. S. to that effect was in force.

Hall v. Brennan, 140 N. Y. 409.

§ 26. **Month.**— In a statute, contract or public or private instrument, unless otherwise provided in such contract or instrument, or by law, the term month means a calendar month and not a lunar month. A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

§ 27. **Days; mode of computing days; night-time.**— A calendar day includes the time from midnight to midnight. Sunday or any day of the week specifically mentioned means a calendar day. A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. Sunday or a public holiday, other than a half-holiday, must be excluded from the reckoning if it is the last day of any such period, or if it is an intervening day of any such period of two days. In computing any specified number of days, weeks or months from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified number of days, weeks or months of time is reckoned shall be excluded in making the

Standard time, civil codes, etc.

reckoning. Night-time includes the time from sunset to sunrise. [*Thus amended by L. 1894, chap. 447, taking effect May 3, 1894.*]

§ 28. **Standard time.**—The standard time throughout this state is that of the seventy-fifth meridian of longitude west from Greenwich, and all courts and public officers, and legal and official proceedings, shall be regulated thereby. Any act required by or in pursuance of law to be performed at or within a prescribed time, shall be performed according to such standard time.

§ 29. **Civil and Criminal Codes.**—The term Civil Code means the Code of Civil Procedure. The term Criminal Code means the Code of Criminal Procedure.

§ 30. **Laws of England and of the colony of New York.**—A statute of England or of Great Britain shall not be deemed to have had any force or effect in this state since May first, seventeen hundred and eighty-eight. Acts of the legislature of the colony of New York shall not be deemed to have had any force or effect in this state since December twenty-ninth, eighteen hundred and twenty-eight.

The resolutions of the Congress of such colony and of the convention of the State of New York, shall not be deemed to be the laws of this State hereafter.

§ 31. **Limiting the effect of repealing statutes.**—The repeal hereafter or by this chapter of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision. The repeal hereafter or by this chapter of any provision of a statute, which amends a provision of a prior statute, leaves such prior provision in force unless the amendatory statute be a substantial re-enactment of the statute amended. The repeal of a statute or part hereof shall not affect or impair any act done or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected; and all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the tak-

Effect of repeal, etc.

ing effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

Before the enactment of this section it was held that the repeal of a repealing act revived the act repealed.

Chard v. Holt, 136 N. Y. 30.

In the case of Ottman v. Hoffman, 7 Misc. 714, this doctrine is applied notwithstanding the provisions of this section. In this case the court held that the omission in the repealing schedule of the General Corporation Law of 1892, chap. 687, of a statute included in the repealing schedule of the Stock Corporation Law of 1890, chap. 564, revived the statute so omitted, the repeal of which was thereby repealed.

The theory of this decision is that because this act, the Statutory Construction Law, was passed at the same session as the repealing act of 1892, the following section 33 precludes this section 31 of the Statutory Construction Law from affecting other statutes passed at the same session.

As to the effect, before the statute, of an act repealing an amendatory act, see *People v. Wilmerding*, 136 N. Y. 363; *White v. Inebriates' Home*, 141 id. 123. A law put in the form of an amendment of a law which has to have been upheld and given effect when it has come before the court for construction. Legislatures have been held to have legislated in view of the existing general saving clause, and where no provision is made in a repealing act, it has been deemed applicable thereto and as a part thereof.

§ 32. Effect of repeal and re-enactment.—The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall be construed as a continuation of such provisions of such prior law, and not as new enactments. If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provisions. [*Thus amended by L. 1894, chap. 448, taking effect May 3, 1894.*]

As to the continuous character of revision with repeal and re-enactment, see *Matter of Prime*, 136 N. Y. 347; *People ex rel. Ulrich v. Bell*, 24 St. Rep. 114.

§ 33. Effect of revision upon laws passed at same session or before revision takes effect.—No provision of any chapter of the revision of the general laws, of which this chapter is a part, shall supersede or repeal by implication any law passed at the same session of the legislature at which any such chapter was enacted, or passed after the enactment of any such chapter and before it shall have taken effect; and an amendatory law passed at such session or at any subsequent session begun before any such chapter takes effect, shall not be deemed repealed, unless specifically designated in the repealing schedule of such chapter.

Alteration of titles, etc.

§ 34. **Alterations of titles and headnotes.**— If the title of any article or other division of a statute, or the headnote of a section shall be amended or repealed in the body of the statute, or if a new article or other division having a title, or a new section having a new headnote be added to a statute, the corresponding title or headnote, if any, in an abstract of contents at the beginning of the article or other division of the statute shall be deemed to be correspondingly amended or repealed although there be no express reference thereto.

§ 35. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 36. **Time of taking effect.**— This chapter shall take effect immediately.

	Sections repealed.
Revised Statutes, part I, chapter 8, title 8.....	16.
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Revised Statutes, part II, chapter 4, title 2.....	3.
Revised Statutes, part II, chapter 4, title 3.....	9.
Revised Statutes, part III, chapter 8, title 17.....	27.
Revised Statutes, part III, chapter 10, title 4.....	4.
Revised Statutes, part IV, chapter 2, title 8.....	16.
Laws 1828, second meeting, 51st session, chapter 20.....	9, 10, 11.
Laws 1828, second meeting, 51st session, chapter 21.....	3 and 4.
Laws 1857, chapter 536.....	3.
Laws 1874, chapter 321.....	All.
Laws 1877, chapter 466.....	27.
Laws 1884, chapter 14.....	All.
Laws 1886, chapter 21.....	20.
Code of Civil Procedure.....	29, 788, 960 and subdivisions 6, 7, 8, 15, 17, 21, 22, 23 and 24 of section 3343.
Code of Criminal Procedure.....	955, 956, 957.
Penal Code	261, 500 and subdivisions 9, 10, 11, 12, 13, 14 and 15 of section 718.

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